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A Guide to the  
Preservation of  
Federal Judges'  
Papers

Federal Judicial Center  
1996

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# A Guide to the Preservation of Federal Judges' Papers

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This Federal Judicial Center publication was undertaken in furtherance of the Center's statutory mission to "conduct, coordinate, and encourage programs relating to the history of the judicial branch of the United States government." The views expressed are those of the authors and not necessarily those of the Federal Judicial Center.



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# Preface

Every federal judge creates a unique record of service in the courts. The chambers papers and other personal manuscripts that document a judge's career are an important resource for understanding that individual's service and for explaining the judicial process. Published opinions and the official court records destined for the National Archives describe only a portion of the work of federal judges. By preserving significant papers and donating them to a manuscript repository, a judge has the opportunity to broaden the historical record and contribute to the public's understanding of the duties and responsibilities of the federal bench. This guide, prepared by the Federal Judicial History Office, discusses the importance and usefulness of judges' papers and offers suggestions for those who wish to make their papers available to a repository. I hope that every judge will consider the merits of preserving the documentary legacy each created, and I encourage each to contact the History Office at the Federal Judicial Center for any additional assistance.

Judge Rya Zobel  
Director, Federal Judicial Center





# Acknowledgments

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Bruce A. Ragsdale  
Chief Historian



# Introduction

The papers of federal judges constitute a valuable documentary record of the careers of judges and of the broader work of the federal courts. These papers offer a perspective and level of detail not available in the official records of the courts. Preservation of these papers establishes a foundation for comprehensive studies that can document the importance of the federal judiciary in American life. Yet all too often this valuable portion of the record of the federal courts has been lost, and with it a full appreciation for the contributions of individual judges. In response to frequent requests for advice about the disposition of the papers of federal judges, the Federal Judicial History Office offers this guide to answer questions regarding the preservation of personal papers and the process of making those papers available for study. This publication describes how students of the federal courts use judges' papers, offers recommendations for the management of documents in chambers, and suggests guidelines for the selection of a proper repository to house a collection of papers.

Among the most valuable of a judge's personal papers are the chambers papers, which are the case-related documents, correspondence, and records of court governance distinct from the official record of the court. These papers are the personal property of the judge. Each judge retains the prerogative to make final decisions about the preservation of chambers papers and the terms of access, including, for example, restrictions that close a manuscript collection to researchers until a specified number of years after a case is closed. Judges can preserve their personal papers and make those papers available for eventual study by arranging for them to be donated to a manuscript repository. This guide encourages all federal judges to consider the historical value of their personal papers and explains how to approach a manuscript repository that might be interested in preserving judicial papers.

Judges will find numerous advantages in contacting manuscript repositories, even early in their careers on the bench. Discussions with a potential repository will offer judges an understanding of the kinds of documents that will make a collection unique and will contribute to public understanding of the federal judiciary. Staff from the repository also will inform the judge of the other types of personal papers that can enhance a manuscript collection. Before the transfer of records, manuscript curators can meet with the donor's

staff and work with them to devise an efficient system of organization for non-current records. A repository may then accept the transfer of non-current records and relieve the court or the judge of the burden of storing and maintaining those files.

This guide should help federal judges take the first step in preserving their chambers papers. The staff of the Federal Judicial History Office is available to answer any questions regarding the papers of a federal judge and will assist in locating a manuscript repository that might be interested in accepting a judge's papers.

The Federal Judicial History Office maintains a listing of all manuscript collections related to federal judges. The Office has identified approximately 5,000 manuscript collections containing papers of federal judges, including more than 900 personal collections of judges. A complete description of these collections will soon be published in *A Directory of Manuscript Collections of Federal Judges*. Regular updates of the *Directory* will be made available in electronic form. All who have placed judges' papers in repositories are asked to notify the Federal Judicial History Office of the papers' locations by filling out the register found at Appendix E.

The Federal Judicial History Office will provide further advice on issues related to the preservation of judges' papers and the donation of a judicial collection to a manuscript repository. Please call (202) 273-4180 or contact the office at the Federal Judicial Center, One Columbus Circle, N.E., Washington, DC 20002-8003.



# Completing the Historical Record: the Significance of Judges' Papers

Judges' chambers papers contribute to a comprehensive understanding of the history of the federal courts and thus promote public confidence in the judiciary. The official court record, with its focus on formal procedures, does not reflect the full complexity of the judicial process and the work of individual jurists. Chambers papers reveal the challenge and difficulty of the judicial trade more clearly than official case files by helping to explain the internal work of the federal courts and the process of judicial deliberation. Chambers papers also describe exchanges between the bench and the bar and the relationship between the court and the community in ways that published opinions and official case files cannot.

Chambers papers frequently include predecisional material, such as draft memoranda, draft opinions, orders, correspondence, and research. Often included among chambers papers are documents relating to the administration of courts or justice, news clippings concerning the judge or specific cases, personnel files, and miscellaneous records of the judge's activities, such as speeches, awards, photographs, and memorabilia. These papers are a critical source for learning about the accomplishments of individual judges and documenting judges' careers. Chambers papers also reflect the diverse backgrounds and experiences of judges who make up the judiciary at any given time and, in the final analysis, promote a broad public understanding of the American judicial process and the men and women who carry out the duties of the federal courts.

Although awareness of the importance of chambers papers has increased in recent years, their significance for a full understanding of the federal judiciary is not always apparent to those involved in the day-to-day workings of the federal courts. Students of the courts, however, recognize the unique perspective offered in these sources. Recent scholarship on the history of the federal judiciary offers abundant examples of the richness of detail and context to be found in a judge's chambers papers and personal records. From this work, in turn, comes the foundation for educational materials and popular understanding of the history of the federal courts.

While judges' manuscript collections have potential value for the study of a broad range of topics dealing with public life and the judiciary, the collections are indispensable for three general areas of research: biographical studies; institutional histories of a single court or a number of courts; and more general studies of legal history.

## *Biographical Studies*

Chambers papers can be one of the most valuable sources for a judge's biography. The papers created by a judge are often a key to understanding that individual's distinct impact on the work of the courts. Files maintained in chambers provide insights into the judge's full career by chronicling professional and community relationships as well as the work of jurisprudence. Interest in biographical study extends beyond the well-known figures in the history of the federal courts. Many trial and appellate judges who may not be nationally known play significant roles in the legal development of their districts, circuits, or states. Their papers offer valuable insights into the history of those jurisdictions. The availability of personal papers from a cross section of judges also makes possible collective biographies, which are an important way of studying the development of the federal judiciary and the diversification of the bench.

Judicial biography has attracted increased attention in recent years, as demonstrated by the growing number of published works not only on Supreme Court justices, but also notable studies of district and appellate court judges such as Learned Hand, Ogden Hoffman, Frank M. Johnson, and J. Waties Waring.<sup>1</sup> These works rely on the personal papers that bring life and texture to the official records of those judges' courts.

## *Institutional Histories*

In his history of the U.S. Court of Appeals for the First Circuit, George Dargo found that a single judge's collection "documented the history of the court . . . in ways that could not be duplicated." Discovery of the collection "proved to be a turning point in [his] search for a First Circuit history."<sup>2</sup> For court historical societies the papers of federal judges provide a perspective on the de-

1. Gerald Gunther, *Learned Hand: The Man and the Judge* (1994); Christian G. Fritz, *Federal Justice in California: The Court of Ogden Hoffman, 1851–1891* (1991); Jack Bass, *Taming the Storm: The Life and Times of Judge Frank M. Johnson, Jr., and the South's Fight over Civil Rights* (1993); and Tinsley E. Yarbrough, *A Passion for Justice: J. Waties Waring and Civil Rights* (1987).

2. George Dargo, *A History of the United States Court of Appeals for the First Circuit*, vol. 1, 1891–1960, at 217 (1993).



velopment of a particular court. Several published court histories demonstrate the importance of these personal papers. Rayman Solomon's history of the Court of Appeals for the Seventh Circuit and David Frederick's history of the first fifty years of the Ninth Circuit both draw from the private papers of judges who served on the respective courts, while Deborah J. Barrow and Thomas G. Walker made special use of the papers of Judge John Minor Wisdom and others for their study of the Court of Appeals for the Fifth Circuit.<sup>3</sup> Wider availability of judges' papers would enrich future court histories and give these institutional studies a broader importance for understanding the history of the federal government.

Chambers papers document the institutional development and operation of the courts. In a model study of the early federal courts in one state, Mary K. Bonsteel Tachau used the personal papers of judges to analyze the role of the federal judiciary in Kentucky. Richard E. Ellis's broader study of the federal courts early in the nineteenth century draws on judges' papers for a variety of its findings. In one of the most thorough investigations of the relationship between judicial appointments and partisan politics, Kermit L. Hall examined the personal correspondence of numerous judges appointed to the federal bench during the mid-nineteenth century. Peter Fish's study of the origins of modern judicial administration demonstrates that judges' papers can be a crucial source for explaining innovations in court governance. His examination of the papers of judges who served on the U.S. Judicial Conference in the 1930s, for instance, makes an important contribution to his discussion about the establishment of the structure of modern federal governance.<sup>4</sup>

Chambers papers may represent the chief source of information about the implementation of procedures or changes in long-standing practice, such as the advent of new forms of case management. Collections of judges' papers provide one of the best means of determining the impact of growing caseloads or other trends in the business before the federal courts. A judge's personal files give a broader dimension to an institutional history by offering what is often the only documentation of the public response to a case before the courts.

3. Rayman L. Solomon, *History of the Seventh Circuit, 1891–1941* (1981); David Frederick, *Rugged Justice: The Ninth Circuit Court of Appeals and the American West, 1891–1941* (1994); Deborah J. Barrow & Thomas G. Walker, *A Court Divided: The Fifth Circuit Court of Appeals and the Politics of Judicial Reform* (1988).

4. Mary K. Bonsteel Tachau, *Federal Courts in the Early Republic: Kentucky, 1789–1816*. (1978); Richard E. Ellis, *The Jeffersonian Crisis: Courts and Politics in the Young Republic* (1974); Kermit L. Hall, *The Politics of Justice: Lower Federal Judicial Selection and the Second Party System, 1829–61* (1979); Peter Graham Fish, *The Politics of Judicial Administration* (1973).

The chambers papers of judges who broke barriers of gender or race on their courts may provide a unique resource for study of the diversification of the bench.

## *Legal History*

Perhaps the greatest potential contribution to be made by judges' papers is toward broad studies of legal history. The papers of federal judges help to explain a wide variety of topics related to law and public life, including the evolution of legal doctrine, court enforcement of federal legislation, or popularly organized litigation campaigns. Judges' papers are also useful for analyzing a specific case or related cases.<sup>5</sup> Unfortunately, the relative scarcity of judges' collections in repositories and the difficulty in locating these scattered papers have deterred many researchers from taking advantage of this kind of historical resource. The preservation of more collections from a wider variety of judges and the availability of guides, such as *A Directory of Manuscript Collections of Federal Judges* (forthcoming), will encourage further examination of aspects of judicial history that will be relevant for cultural, political, and economic histories. As a personal record of service on the federal court and a unique indicator of the judiciary's interaction with other public institutions, the collections of federal judges attract researchers who otherwise might not consult the official court records. Judges' papers are excellent sources for integrating the history of the federal judiciary and legal culture into broader studies of American government and public life.

5. See, e.g., John Henry Schlegel, *American Legal Realism and Empirical Social Science* (1995); and Robert J. Kaczorowski, *The Politics of Judicial Interpretation: The Federal Courts, Department of Justice and Civil Rights, 1866–1876* (1985).



# The Organization of Chambers Papers: What to Save and How to Save It<sup>6</sup>

Federal judges and their staffs frequently inquire about which materials among judges' papers merit preservation. The most valuable judicial manuscript collections are those that complement rather than duplicate the official court record and published sources. Those records unique to a judge's chambers will be the most illuminating about the court, the particular accomplishments of that judge, and the times and area in which the judge served. Documents, such as memoranda between judges or between the judge and staff, that explain the problems of judicial decision making and other predecisional materials that illuminate the judge's formulation of opinions, management of cases, or approach to court administration will contribute to a better appreciation of the responsibilities of federal judges.

For judges who wish to provide their staffs with some specific guidelines concerning categories of materials to preserve, the following section offers some brief recommendations. Following that is a section providing guidance for staff involved in the establishment of a program of "records management"—an ongoing system to manage noncurrent records in chambers. Such a system will help staff to keep files orderly and prevent their proliferation in a limited space. It also will facilitate the transfer of records to a repository for preservation.

This discussion is not meant to be definitive. Repositories vary in their policies about retaining different categories of materials, and each collection of judges' papers presents different questions. A judge who decides to preserve chambers papers will find it helpful to consult with the manuscript curator of a potential repository to make sure that they agree about issues each considers important. Judges may use the lists below as a basis for discussion with curators and for instructions for staff who will be responsible for managing the

6. This manual has drawn substantially on the report, *Records Management in Federal Courts: a NARA Evaluation* (1992), prepared by the National Archives and Records Administration (NARA) for the U.S. Court of Appeals for the D.C. Circuit. To prepare their study, two NARA appraisal archivists examined sample files of four sitting judges (two trial and two appellate) and reviewed three judicial collections held by the Library of Congress Manuscript Division (papers of Judges J. Skelly Wright, Clement Haynsworth, and Simon Sobeloff).

records. In addition, judges may wish to consult the inventories of other judges' collections already in the possession of repositories. (See sample inventories and series file in Appendix C.)

## *Identifying Documents for Preservation*

Papers routinely found in the chambers of a federal judge fall into the following categories:

- case-related correspondence and background material, including but not limited to memoranda between judges and law clerks, memoranda between judges on an appeals panel, drafts of orders and opinions, and letters from the public;
- records of court administration and governance;
- documents related to participation on judicial committees;
- communications between judges and members of the bar concerning legal activities in the community;
- correspondence concerning issues of public affairs;
- papers related to nonjudicial activities of the judge (e.g., service to non-law-related organizations and participation in civic affairs); and
- personal papers related to the judge's private life.

Chambers papers might be organized in three series:

1. Case files.
2. Other court-related activities.
3. Nonjudicial activities.

### **Series 1. Case Files—Separating the Official Case Files and Chambers Papers**

Practice varies among courts and chambers regarding the contents of the official case files and files that the judge maintains separately in chambers. In some instances, local rules specify those materials that are to be placed in the official case file, noting that certain materials, such as exhibits, should be returned to the parties. Federal records statutes obligate courts to “preserve records containing adequate and proper documentation of . . . functions, policies, decisions, procedures, and essential transactions” of the court. (44 U.S.C. 3101) Therefore, all materials filed officially with the court in support of litigation belong in the official case file—such materials include briefs, depositions, and exhibits made part of the record. The *Clerks Manual, United States District Courts*, published by the Administrative Office in 1993, lists the

documents that belong in the official case file.<sup>7</sup> These documents include the following:

pleadings	jury instructions
indictment information	transcripts and tapes of proceedings
warrants	briefs
motions	correspondence
orders	judgments
depositions and interrogatories	sentencing materials
courtroom minute sheets	paper exhibits made part of the record

For their own reference, judges may wish to instruct staff to include in the chambers files copies of documents from the official case files. The other documents in the case files retained in the judges’ chambers will differ considerably, both in size and content, according to the type of court. The criteria for preservation, however, are the same. The documents that make a judge’s case files historically valuable are those that provide information not available in the official court record and those that illustrate the decision-making process of the judge or panel of judges.

The following suggestions, listed according to type of court, offer guidelines for the organization and preservation of personal case files.

*District Courts*

Each district court judge usually maintains a series of chambers case files. If the judge maintains files of predecisional material, these items will offer an understanding of the judge’s work that is not conveyed in the official record. It is the working files that will give a district court judge’s papers interest and importance. Judges may also choose to retain duplicates of the original documents transferred to the official case files. These copies will help to explain the other material in the chambers papers and will assist those who may not have easy access to the relevant National Archives regional center, although a repository may not be interested in case files that only contain information that is available elsewhere.

Arrangement by docket number will permit cross-referencing to the official case files. Some judges’ staffs create name indexes to permit easy access, and these would be helpful for repositories and researchers as well. The following table lists the suggested disposition of a district court’s non-official records.

7. Administrative Office, Clerks Manual, United States District Courts, 1993, at 26-6 & 26-7.



<i>Type of Record</i>	<i>Disposition</i>
Judge's memoranda to law clerks or motions clerks	Preserve permanently.
Law clerk memoranda related to the specific case	Preserve permanently.
Judge's notes on oral argument	Preserve permanently.
Draft opinions or orders	Preserve permanently.
Opinion galleys and proofs	Retain those with revision of contents noted; discard unmarked proofs upon receipt of slip opinion.
Slip opinions	Preserve permanently; file one copy in chambers case file and one copy in judge's opinion file (if separate opinion file is maintained).
Correspondence from/to the public	Preserve permanently; if voluminous, file separately from other case file material and label with case name, noting "public correspondence" (this file may be weeded by the curator to preserve a representative sample).

### *Courts of Appeals*

Like district court judges, appellate judges routinely maintain a series of case files. These files are usually arranged by docket number. Any indexes created by the judge or staff will facilitate use of the collection. The chambers case files of appellate judges are likely to include a different kind of predecisional material because of the frequency of communications between judges serving on a panel. In arranging for the preservation and donation of these confidential communications, judges will want to consider the questions regarding restrictions on access that are discussed below (see *infra* pages 21–23).

The following table lists the suggested disposition of courts' of appeals non-official records.

<i>Type of Record</i>	<i>Disposition</i>
Judge's notes on oral argument	Preserve permanently.
Judge's memos to law clerks or motions clerks	Preserve permanently.
Legal research; related opinions	Save memoranda; discard photocopies of cases after case is closed.
Bench memoranda	Preserve permanently.
Voting memoranda	Preserve permanently.
Conference notes	Preserve permanently.
Draft opinions with judges' notes	Preserve permanently.
Judge correspondence	Preserve permanently.
Opinion galleys and proofs	Retain those with revision of contents noted; discard unmarked proofs upon receipt of slip opinion.
Correspondence re: publication	Preserve permanently.
Slip opinions	Preserve permanently; file one copy in chambers case file and one copy in judge's opinion file (if separate opinion file is maintained).

### *Bankruptcy and Magistrate Judges*

In most instances, the official court record encompasses a higher proportion of the documents created by the work of bankruptcy and magistrate judges than of those created by district and appellate judges. Bankruptcy and magistrate judges will have files containing internal memoranda, documents related to court governance, and records of judicial committee work. These chambers papers are the judges' to dispose of as they choose. As with district and appellate judges, for these papers to be preserved a judge needs to locate a repository that will accept the collection.

Regardless of the type of court on which a judge serves, the following suggestions will help the judge's staff preserve records and prepare them for donation to a repository.

### *Closing a Case File*

When a case is closed, the closing date should be clearly labeled and the case should be filed separate from pending cases—this will keep these records in order until their transfer to a repository.

If the file contains any original documents that belong in the official case file (e.g., briefs and exhibits), the clerk will accept these records for completion of the official record. Copies for the chambers file will provide convenient reference for the judge and staff.

If a file contains material that must remain confidential, either because of agreements between the parties or for the sake of personal privacy, the file should be flagged and marked with the date when it may be opened. Filing such materials in a separate box marked “confidential records” will further ensure security. (See *infra* page 22–23, for a discussion of confidential communications among judges.)

Once the records of closed cases are filed separately from open case files, the boxes should be labeled with the docket numbers and closing dates of the enclosed cases.

### Classified Materials

In general, classified materials should be kept in the courthouse or transferred to the Records Declassification Division of the National Archives until they are declassified. (The Library of Congress and the presidential libraries accept classified materials.) After materials are declassified, they may be transferred with the rest of the judge's papers to a private repository. Judges whose chambers papers contain classified materials may request instructions by calling the Records Declassification Division of the National Archives at (301) 713-6600.

### Opinions and Orders

Some judges keep comprehensive files of their orders and opinions separate from the specific case files. Whether a judge maintains such a file or not, copies of orders and opinions placed in the chambers case files would be helpful for manuscript curators and researchers. If a judge creates a separate file of opinions and orders, a repository may wish to accept the file intact, even if a significant proportion of the writings have already been published. Indexes and finding aids for these files are an important addition to the collection.



## *A Note on Public Correspondence*

Judges involved in notable cases may receive letters from the public commenting on the case. Judge Gerhard Gesell, who was involved in a number of such trials, believed that judges should take care to preserve correspondence from the public. “The flood of mail that comes from the public is an extraordinary record of public attitudes toward the court, toward the judiciary, toward the Constitution, and toward [the] issues [raised at trial].”<sup>8</sup> A report by the National Archives for the D.C. Circuit Executive noted that “[s]ome of the cases judges hear attract widespread public attention. As a result, judges may accumulate press clippings (news articles, editorials, editorial cartoons) as well as correspondence from the general public. These materials should be preserved for eventual donation to an archival depository.”<sup>9</sup> Such correspondence can be kept in files labeled with the docket number, the case name, and the notation “public correspondence.”

## Series 2. Other Court-Related Activities

Federal judges participate in numerous activities related to judicial business, including work on committees, court governance, personnel matters, and bar functions. The records of these activities illustrate an important dimension of a judge’s career and may enhance the collection of papers.

Judges who retain these kinds of records may wish to establish sub-series of such files in whatever arrangement they find suitable. Chronological filing will allow records arranged by year to be retired to off-site storage after suitable intervals.

### *Administrative Papers and Office Files*

The administrative papers of a judge can promote understanding of institutional history as well as the history of judicial administration. The files of a chief judge will probably hold the richest documentation in this area, but the files of other judges are likely to contain valuable administrative material. Records may include correspondence, printed policy papers, memoranda, studies, minutes, and committee reports. Additional papers may relate to

8. Remarks of Judge Gerhard Gesell, transcript of panel discussion on documents and records of the Judiciary, National Study Commission on Records and Documents of Federal Officials, December 16, 1976. Dolley Madison House, Washington, D.C., p. 29. Copy on file in Record Groups 220, National Archives and Records Administration.

9. National Archives and Records Administration, Records Management in Federal Courts: A NARA Evaluation 122 (1992).

Judicial Conference and judicial council activities, committee service, and extrajudicial activities. A judge may also preserve files for general correspondence, office personnel, travel vouchers, appointment books, diaries, speech files, seminar files, news clippings, biographical files, and law clerk files.

Documents that illuminate court governance—particularly interactions between chief judges and the other judges on the court, or between the court and the Administrative Office, the Federal Judicial Center, and the circuit judicial council—will make a valuable addition to the historical record. As with the case files, the most significant documents within a judge’s collection are those not found in published form or included in the official records of a judicial agency. Printed materials received from the Administrative Office, the Federal Judicial Center, the Judicial Conference, or agencies not specific to the judge’s own court will be a part of the respective agency’s permanent record, although those materials that pertain to an area in which the judge was active will help to explain documents unique to the judge’s collection. Papers relating to circuit judicial conferences and judicial council business usually duplicate materials saved by the clerk or circuit executive, but again those papers related to activities or subjects in which the judges were directly involved, particularly policy documents they helped draft or minutes of committees on which they played a substantive part, will be a helpful addition to a manuscript collection.

Papers that document a judge’s service on the Judicial Conference or its committees, the Board or committees of the Federal Judicial Center, or other judicial branch advisory boards also will enhance a manuscripts collection. Although most such materials will be preserved by the respective agencies, those general records that illuminate the more specific documents and correspondence among a judge’s papers will be of interest, particularly any such documents containing the judge’s annotated comments.

### *Appointment Books and Calendars*

Most judges keep appointment books and calendars of official responsibilities. These documents can be an important reference source that will help make sense of other parts of a collection.

### *Biographical and Clipping Files*

Files that contain updated resumes, copies of entries in various biographical sources, clippings of biographical articles that appear in periodicals (including newspapers), newspaper and journal articles related to cases, and financial disclosure forms often make a valuable addition to a manuscript collection.



The access restrictions that a judge applies to the broader collection can keep financial records confidential for a stipulated period of time.

### *Invitations and Trip Files*

Judges receive invitations to a wide array of professional and community events, and the invitations are one way of documenting events in which a judge has participated. Routine materials related to trips—correspondence concerning transportation and local arrangements, vouchers—are less likely to provide information not available elsewhere in the collection. Materials such as speeches, background materials for meetings, agendas, and lists of invited guests, however, are useful sources documenting the judge's role in professional activities.

### *Photographic Files*

Photographs are valuable sources of historical information if they are labeled with the names of the participants, the dates of the photographs, the locations, or the events. If individual photographs will not be labeled, then grouping in envelopes or files with informative labels will make them more useful.

### *Speeches and Writing Files*

Speaking engagements may constitute a significant part of a judge's interaction with the bar and the public. A collection of the judge's speech files as well as a file of articles or other writings will be an informative and convenient resource. Any material within these files that documents the evolution of a judge's ideas will be of value. If the sources the judge relied on are documented in the text of the speech, basic reference materials will be redundant. If the judge keeps notices concerning press coverage of the speech, either in the speech files or in a separate set of scrapbooks, such material will offer an extra dimension to these records.

### *Files on Law Clerks*

If judges maintain files on law clerks and preserve correspondence or other records that go beyond typical personnel information, the files will help to explain the relationship between judges and their law clerks. Particularly if the relationship or a correspondence continued after the term of the clerkship, the related documents among a judge's papers will provide an important understanding of the judge's role as a mentor to the clerk.

### Series 3. Nonjudicial Activities

This series should include files related to nonjudicial activities of the judge, such as service to law-related and non-law-related organizations or participation in civic affairs. It also could include personal correspondence and documents such as diaries. Judges who keep diaries create an important historical record of an individual's service on the federal bench and a source that offers a personal perspective on the court's broader work. Even if a collection consists only of a judge's diary, it could further public understanding of the judiciary.

The files relating to nonjudicial activities will include correspondence and papers related to the judge's professional and private life. Most judges come to the bench already having distinguished themselves within their profession. The papers documenting earlier as well as subsequent professional activities can illuminate the relationship between judicial service and other career work, particularly that related to the law. The gathering in one repository of all of the historically significant materials created by an individual greatly enriches a collection. Thus, a repository interested in the papers of a federal judge will want to know of all personal papers that might be available for donation.

### *Managing Chambers Documents for Preservation*

If a judge's staff has instituted a chambers filing system that satisfies the administrative requirements of the court, that system is itself a document of the court's work and will help a manuscript repository to process and catalog the collection.

When papers are no longer needed in chambers, a judge may choose to transfer papers from chambers to a repository and permit the manuscript curators, after a certain date, to process the material, disposing of papers that in the judgment of the curator have no historical significance. Most repositories do not require donors or their staff to select files prior to transfer to the research facility. Curators can consult with the judge and chambers staff in advance of transfer, thus avoiding the repository's discarding of important items in the collection or the unnecessary retention of extraneous documents.

Whether a judge or staff arranges for the regular transfer of records or retains files in chambers until the end of the judge's career, few special preservational measures are suggested for chambers staff apart from standard record-keeping practices necessary for the usual conduct of business, such as the following:



- noting the date a document is created and the name of its writer;
- keeping papers in clearly labeled folders that are later boxed as they were filed in chambers;
- maintaining an inventory that lists files by name and describes their arrangement; and
- photocopying newspaper clippings and older fax papers so that they will prove more durable.

## Electronic Records

Electronic records present a serious challenge for archivists and others concerned with the preservation of the documentary record. Most electronic media—diskettes and tapes—are not as durable or as stable as paper. Hard drives belong to the court and cannot be transferred to private hands. Any document saved in electronic form is dependent on both appropriate hardware and software in order to gain access to the information. Although it is possible to preserve and transfer electronic data to keep up with technological change, most repositories are not able to accommodate the large variety of electronically generated documents.

The permanent record is, for the most part, still a paper record. Most courts still rely on paper documents, and most of the documents in chambers are in paper form. The creation of paper documents is still the best way to ensure the preservation of the record of a judge's career.

As the courts create and maintain more exclusively electronic records, it may become increasingly difficult and expensive to create a paper record for the sake of preservation. Judges who rely heavily on electronic record keeping may want to explore the possibility of transferring electronic data to a repository that has adequate resources to accession the materials and make them available to researchers. Many repositories accept electronic databases. If judges create such tools and convey them to the repository, any accompanying paper documentation will help researchers use the database.

## Storage

Space is at a premium in many courthouses, and inadequate storage areas could result in the loss or damage of historically valuable materials. The staffs of judges who arrange for the eventual donation of chambers papers often can ship to the repository materials no longer needed in chambers. The repository will hold the materials until the judge permits their research use, thereby lessening demands on the court's space. The Federal Records Centers, however, do not have the authority to accept judges' papers, even temporarily.

In order to secure any collections inadvertently sent to the Records Centers, a court's staff can recall a judge's papers for storage elsewhere.

# Manuscript Repositories

## *Selecting a Repository*

The following services will ensure that a repository can properly care for a judicial collection:

- an ongoing, professionally managed manuscript collection program available to researchers and offering professional reference services;
- established, written policies governing access to and use of the collections;
- equal access to all responsible users;
- climate-controlled areas for storage, protected against fire;
- secure storage, processing, and reference areas with controlled access by the public;
- storage of documents in archival containers; and
- capacity to handle nonpaper media (e.g., audiotapes, videotapes, and microfilm) if necessary.

Many repositories have the resources to accept and process a comprehensive collection of judicial papers, and many are eager to accession the papers of a federal judge. Before making any decision about where to donate personal papers, a meeting between the judge and representatives of a prospective repository will help to determine if the institution is fully committed to processing and managing the collection. The earlier the judge makes arrangements with a repository, the better for all parties involved. Once an agreement is reached, the judge can instruct chambers staff on the proper arrangement of personal files, the repository can prepare for the accession of the papers, non-current records might be transferred to the repository on a regular basis, and family and staff will be fully apprised of the judge's intentions.

The choice of a repository will help to determine the accessibility and the scholarly use of a judge's collection. The papers will be most useful if they are placed in a repository that holds complementary collections, such as those of other members of the judge's court. A repository that has an established program collecting manuscripts related to judicial and governmental affairs or one that emphasizes legal history would offer an appropriate location for a judge's collection.



Possible repositories include state historical societies, universities, or law school libraries. Some institutions develop specializations in subject matter and may seek the papers of a judge whose career, both on and off the bench, relates to its area of concentration. Similarly, the presidential libraries often accept papers of public figures who had close relationships to the president whose papers the library maintains.

Judges often express interest in donating papers to an alma mater, usually their law school. If the school has an established manuscript program, that may be a suitable choice. Such collections often seek the papers of graduates. If a school does not have an existing manuscript repository, it may wish to establish one. However, a single collection of papers, without the benefit of professional curators or facilities for researchers, could prove to be virtually inaccessible. If a judge chooses an institution that does not already have a manuscript program established, a written agreement might include an arrangement for processing the papers and making them available to researchers.

Some courts have considered the possibility of establishing a relationship with a university or state historical society that would serve as the repository for the papers of judges from that court. Such a relationship might benefit both parties: The repository would establish a collecting area and thus permit the curators to develop specialized knowledge helpful in administering the collection and assisting researchers, while the judges would be assured of a satisfactory home for their papers. Judges would reserve the right to offer their chambers papers to other institutions if they preferred.

A thorough list of repositories is available in *Directory of Archives and Manuscript Repositories in the United States*, second edition (1988), compiled by the National Historical Publications and Records Commission. The Federal Judicial History Office can provide judges with lists of appropriate repositories in their area. A judge may choose to approach a repository or may ask the Federal Judicial History Office to make an initial inquiry.

## The National Archives and Records Administration

The National Archives holds the official records of the federal courts. It does not normally accept personal papers into the regular archival collections. The only exception to this policy applies to the presidential libraries, which are administered by the National Archives.

## The Library of Congress

The Library of Congress does not routinely acquire the papers of federal judges. The Library of Congress accepts the papers of federal judges who, in judicial service or in nonjudicial careers, have made what the library believes are unusual contributions in an area where the library's collections are particularly strong. Most of the Library of Congress's recent collections of judicial papers are from appellate court judges whose work had particular significance for civil rights or federal regulation.

## Court Libraries

Some judges have proposed donating papers to their court library. Most court libraries are not equipped to handle the processing and reference services required to administer collections of manuscripts and accommodate outside researchers. Court librarians, however, can be an excellent resource for identifying regional archival repositories that may be interested in accessioning the collections of judges from the district or circuit.

## *Determining Policies on Access to a Manuscript Collection*

A judge who wishes to limit access to a manuscript collection should discuss the potential restrictions in detail with representatives of a repository. Archival institutions seek to preserve historically significant materials and make them available for research purposes without excessive delay. Repositories, however, recognize that donors often have legitimate reasons for restricting access to some papers and will generally agree to administer restrictions that a judge wishes to apply to a collection.

Many repositories may not have the resources to administer unduly complicated restrictions or those contingent on something other than the passage of time. Restrictions that require the regular supervision of archival staff may prove too time-consuming or costly. It also is preferable not to apply restrictions that depend on the discretion of a third party. For example, closing case files until a specific date is preferable to allowing access with the permission of an executor, who may be unfamiliar with the collection or who may be difficult to locate, especially years after the judge has died.

When deciding to donate papers, judges should know that many of their papers can be made available for research at the time of deposit, after a relatively brief period of restriction, or upon their death. Speech files, correspon-



dence files on matters related to nonjudicial activities, and files documenting work long since completed might be opened immediately after they are deposited.

In determining what, if any, access restrictions are proper, a judge might consider several key issues: periods of restriction, equal access, judicial communication, and privacy concerns.

## Periods of Restriction

The easiest restriction for a repository to administer, and one likely to provide the best protection of confidentiality, is a provision that limits access to all or part of a collection to all users for a specific period of time.

Judges who choose to embargo files might consider opening case files some years from the date of termination of the case rather than from the date when the judge's service ends. If a judge dies while serving, restriction until the death of the donor would permit immediate access to chambers case files for recently terminated cases. For a judge with thirty years on the bench, closure until the judge's death would result in lengthy restrictions on cases long concluded. An access date keyed to the date of the termination of the case offers protection of confidentiality and reasonable access. The judge may choose to offer earlier access to files not related to cases, such as administrative or committee papers.

In practice, judges and their families impose widely varying terms of access. In addition to the restrictions cited above, frequently used provisions include immediate access with permission of the judge, no restrictions, and access restricted until the death of all participating judges. (See Appendix A for a table listing selected access restrictions.)

## Equal Access

Most repositories, concerned that privileged access would hinder a fair exchange about the interpretation of the evidence, prefer to open materials to all researchers or close them to all researchers. When determining restrictions for papers in a repository, judges should be aware of current archival practices and standards that accord all researchers equal status.

## Judicial Communications

The chambers papers of almost every judge will contain communications from other judges on the court. Particularly regarding appellate courts, judicial tradition honors the practice of confidential discussions among judges during



their decision making and recognizes the need to have those discussions remain confidential long enough to protect the integrity of the judicial process. Some judges believe that confidentiality prevents a judge from making such communications public during the lifetimes of the other judges, if at all. Others believe that, because every judge is a public official, work-related materials should be made available at the point when disclosure will not interfere with the business of the court.

Some courts have formulated guidelines for the period after which researchers are permitted access to chambers papers that contain communications among judges on that court. The period might run from the date the case closed. Such a guideline would assure the judges of that court that they will breach no confidence by preserving the historical record of the court's work. Restriction of access until the death of all participating judges would satisfy many concerns about confidentiality, but it may be difficult for repositories to enforce because of the problems of tracking a number of individuals. Before imposing such a restriction, a judge or a court should consult with its repository to see if it would be able to comply.

Even in the absence of a court guideline, judges who wish to donate their papers need not purge their files of communications from other judges. The imposition of a longer embargo period on this part of a collection would satisfy concerns about confidentiality without diminishing the historical record by removing integral documents.

## Privacy Concerns

A judge involved in a case that resulted in the filing of an unusual amount of personal information may have concerns about the protection of privacy. Although the Freedom of Information Act (FOIA) does not apply to the federal courts and certainly does not reach the chambers papers of federal judges, the guidelines established by that law may be useful in determining what portions, if any, of the papers included in chambers might constitute an unwarranted invasion of personal privacy if prematurely disclosed.<sup>10</sup>

In the FOIA, categories excluded from public review by demand include the following:

- material classified for reasons of national security or foreign policy;
- personnel and medical information;
- "investigatory records compiled for law enforcement purposes"; and

10. Gary M. Peterson & Trudy Huskamp Peterson, *Archives and Manuscripts: Law* (1985).

- “trade secrets and commercial or financial information obtained from a person and privileged or confidential.”

It is not necessary to embargo all material of this kind, but a careful review of these materials will help to ensure that disclosure would not constitute either violation of the law or invasion of privacy.

Repositories differ about the nature of their responsibility to ensure confidentiality and to protect the privacy of third parties. Most repositories prefer to have donors identify files that require access restrictions and specify what those restrictions are. To avoid misunderstandings about the responsibility for protecting the privacy of individuals, the repository can offer the judge a full description of the repository’s policy.

## *Preparing a Deed of Gift*

The donation of papers to a repository requires an instrument of gift that specifies the circumstances under which the actual transfer of the materials takes place, conveys ownership of the materials, transfers copyright where appropriate, and stipulates conditions under which researchers may view and copy documents. Most repositories will supply a standard form. (Sample agreements are attached in Appendix B.) Donors, however, often draft a wide range of stipulations in conjunction with a repository.

Initially, a judge may wish to deposit material in a repository without transferring title to the documents. If the repository agrees to this arrangement, the agreement should so state and indicate the point at which title to the material will transfer.

The essential components of a deed of gift include the following:<sup>11</sup>

- *Name of the donor*—That is, the person holding title to the material. For a judge’s chambers papers, the owner is either the judge or the heirs to the papers.
- *Name of the recipient*—Before proceeding with a donation, a donor must ensure that the designated recipient wishes to accept the collection. The repository must be contacted in advance of the donation, and it should supply the wording for specifying the recipient, which may differ from the title of the repository. For example, a donation that will be held in a state university library may require deeding the papers to the state.

11. *Id.* at 24–27.



- *Transfer of title*—The deed of gift should specify that the title passes to the repository. Rights (of access, use, copyright) should be addressed separately.
- *Description of the materials and circumstances of transfer*—Donors should include a narrative description of the materials included in the donation. Where a judge arranges for donation before the end of his or her service on the bench, the agreement should specify the times at which materials will be transferred (e.g., “Chambers files will be deposited annually in February and will comprise files related to cases terminated at least two years earlier. Other office files will be transferred annually and will consist of material no longer needed in chambers.”). The agreement should state that the judge may consult the material as is necessary and that the repository will return requested files or boxes to the judge for use in chambers.
- *Additional shipments*—If the judge is transferring material periodically, the agreement should note that such transfers will occur in accordance with the present agreement. This provision will eliminate the need for a new document for each addition to the collection.
- *Copyright*—Although the physical documents have been construed to be the personal property of the judge and subject to the judge’s disposal, the law concerning copyright (Copyright Act of 1976, 17 U.S.C.) stipulates that materials created by government employees while carrying out their duties are not protected by copyright. The materials are therefore in the public domain, and the judge cannot claim a copyright on them. The judge’s papers, however, may contain material written by others, where the copyright has not been conveyed to the public domain or otherwise transferred. Therefore, some portions of donated papers may be protected by copyright and others not. Gary Peterson & Trudy Peterson caution, “Transfer of the physical object of the work does not transfer ownership of the copyright because a specific transfer of the copyright by the owner of the copyright is required.”<sup>12</sup> Judges should clearly indicate their intentions concerning any material to which they hold copyright. It is easiest for both the repository and future researchers if copyright is transferred with the documents; otherwise, researchers will need to contact the holder of the copyright before using any unpublished material. The judge can transfer copyright to the repository and still preserve the right to use the material or to restrict access, but any such provisions should be spelled out in the document. The copyright may also be transferred to the public do-

12. For a comprehensive discussion of copyright law and its relationship to archival practices, see Gary M. Peterson & Trudy Huskamp Peterson, *Archives and Manuscripts: Law* 81–89 (1985).

main, in which case researchers can freely publish from the collection. Again, any such transfers must be explicitly stated in writing.

- *Disposal*—The repository may wish for a grant of authority to dispose of material that it determines unworthy of permanent preservation. The judge may ask that such items be returned rather than destroyed. The agreement may also permit transfer of paper records to other formats (such as microfilm or optical disc) to provide flexibility to an archive with space constraints. If such a provision is included, judges will want to specify that access conditions pertain to material regardless of format.
- *Access for processing*—A clause should explicitly grant access to the archivists (under the burden of confidentiality) for the purpose of processing materials otherwise restricted.
- *Access for research*—The deed of gift should specify whatever access restrictions the judge decides to apply to the collection.
- *Subpoena clause*—Such a clause specifies the responsibility of the repository to contact the donor in the event a portion of the collection is subpoenaed. (See the sample agreements in Appendix B.)

It is important to put all conditions in writing. Written agreements—explicitly and clearly stated—prevent misunderstandings and clarify for users, colleagues, and family members precisely what the judge intends.

## Bequests

If a judge plans to bequeath chambers papers to a repository, it is important to make plans in advance of such a donation and to work out agreements with the potential repository about the terms of the donation.

## Tax Deductions for Donations of Papers

The law governing tax deductions for the papers of public officials is complex. Judges are advised to consult with an attorney and the potential repository.

## *Transfer of Papers*

Many repositories will accept papers on an ongoing basis as a judge determines that the papers are no longer needed in chambers. Older files can be transferred to the repository while newer ones are boxed and kept in chambers.

Repositories will have different transfer procedures. Some will send archivists to chambers to assist in shipping files, some will ask that all papers be sent to the repository, and some will request that only certain categories of



papers be sent. Repositories also have varying policies concerning paying for the shipment of donated papers. Some repositories will pick materials up or pay for shipment. Others ask donors to bear the cost of shipping.

According to William R. Burchill, general counsel of the Administrative Office, a court may be able to pay for shipment of a judge's papers. He issued the following opinion concerning payment for shipping when a judge transfers chambers papers to a repository:

Judges accumulate a wide variety of papers in their chambers over the years, mostly but not entirely related to their judicial duties. A judge will often donate or bequeath certain public and private papers to a repository, if the judge believes they will be of interest to historical researchers. Since the documents have often been created and maintained at public expense, if the judge chooses to treat them as "public" when he or she leaves the bench, I would conclude that the court may pay the cost of shipment to the repository.<sup>13</sup>

The letter goes on to state that if the judge treats the papers as personal property—e.g., taking a charitable tax deduction—the papers could not be shipped at government expense. (The full text of the letter may be found in Appendix D.)

Repositories will appreciate any assistance the judge's staff can provide about the contents of the files being shipped. Ideally, each shipment will contain a file list for each box of files and the list will describe the contents and the dates of the files. For example:

Box 1: Case files, terminated January–March, 1988.

Box 2: Case files, terminated April–August, 1988.

Box 3: Case files, terminated September–December, 1988.

If possible, it would be helpful to have a more detailed list for each box:

Box 1: Case files, terminated January–March, 1988.

8800821      *Smith v. Jones*

8802586      *White v. Gray*

8803597      *Green v. Blue*

If a case file contains sensitive material (e.g., personal information concerning a minor child) that would require an unusually long embargo period, the

13. William R. Burchill, Jr., to Judge Abner V. Mikva (Nov. 19, 1995) (letter on file with Federal Judicial History Office).

file should be flagged, separated, and placed in a special container with a date affixed indicating when it may be opened.

# Conclusion

This guide provides some basic assistance to judges wishing to offer their papers as a resource for future researchers and thereby contribute to a better public understanding of the work of the federal courts. As judges and their staffs organize collections, questions undoubtedly will arise that this handbook does not answer. The Federal Judicial History Office can provide further advice and can suggest contacts at specific repositories.





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- Karen Dawley Paul, Records Management Handbook for United States Senators and Their Archival Repositories, S. Pub. 102-17 (1992).
- Gary M. Peterson & Trudy Huskamp Peterson, Archives and Manuscripts: Law (1985).



# Appendix A

## *Selected restriction policies for the papers of federal judges who have donated their papers to manuscript repositories.*

<i>Judge</i>	<i>Repository</i>	<i>Restriction</i>
Craven, James Braxton, Jr.	Duke University	Donated after his death by his heirs; access restricted for fifteen years.
Dobie, Armistead	University of Virginia Morris Law Library	No restrictions (donated after death).
Frank, Jerome	Yale University	Relevant materials restricted during the lifetime of all judges who participated in conference with Judge Frank.
Kaufman, Irving	Library of Congress	Donated after death; papers restricted for ten years after the death of Mrs. Kaufman (access with permission of literary executor); voting memoranda restricted for twenty-five years from the date of the memorandum.
Lenroot, Irvine L.	Library of Congress	Donated by heirs; no restrictions.



<i>Judge</i>	<i>Repository</i>	<i>Restriction</i>
MacKinnon, George E.	Minnesota Historical Society	Access with permission of the judge prior to his death; opened after death.
Michael, James Harry, Jr.	University of Virginia	Restricted; judge controls access.
Michie, Thomas Johnson	University of Virginia	Unrestricted.
Mikva, Abner J.	Illinois State Historical Library	Restricted until ten years after death, access with permission of the donor.
Schwellenbach, Lewis	Library of Congress	Donated by heirs; portion closed for ten years.
Stephens, Harold M.	Library of Congress	Donated by heirs; case files restricted for twenty years after death of judge.
Wald, Patricia	Yale University Library	Closed for ten years after death; earlier access with permission of executor.
Wyche, Charles Cecil	Duke University	Use permitted immediately by "any competent student or scholar for . . . research or study." Publication with permission of judge.

*Restrictions placed on manuscript collections by justices of the United States Supreme Court who have served during the last 50 years.*

<i>Justice</i>	<i>Repository</i>	<i>Access</i>
Black, Hugo	Library of Congress	Access to the collection is restricted during the lifetime of the heirs; permission to use the collection must be obtained from the executors and further permission to publish any writings in the collection, or writing for publication about them, must be obtained.
Brennan, William J., Jr.	Library of Congress	Restricted during his lifetime; access to certain material with his permission; some material open upon his death; “Personal Annual Reviews of the Term’s Work” closed during the lifetime of any justice who participated in the case.
Burton, Harold	Library of Congress	Access with permission during his lifetime; opened upon his death.
Clark, Tom C.	University of Texas Tarlton Law Library	Unrestricted by the donors; library requires application.

<i>Justice</i>	<i>Repository</i>	<i>Access</i>
Douglas, William O.	Library of Congress	Open; materials were originally restricted until his death; later additions to the collection were restricted for five years.
Fortas, Abe	Yale University	Access granted only to those who have the donor's written permission; these restrictions expire in 2000.
Frankfurter, Felix	Library of Congress	Access closed for sixteen years from date of "each paper."
Marshall, Thurgood	Library of Congress	Opened upon his death.
O'Connor, Sandra Day	Library of Congress	Restricted during her lifetime; access with her permission; all but case files open upon her death; case files closed during the service of any justice who participated in the case.
Powell, Lewis F. , Jr.	Washington and Lee University and School of Law	Restricted; judicial papers (Supreme Court and Court of Appeals) restricted during the service of any judge who participated.



<i>Justice</i>	<i>Repository</i>	<i>Access</i>
Stewart, Potter	Yale University	Court materials are closed pending retirement of all justices who served on the Supreme Court with Stewart.
Stone, Harlan Fiske	Library of Congress	Open; donated by widow in 1949; permission required until 1975; then unrestricted.
Warren, Earl	Library of Congress	Open; originally restricted until 1985; terms of his will modified restriction to ten years after his death (i.e., 1984).
White, Byron	Library of Congress	Closed for ten years after his death; open to the public without restriction after that date.

Sources: *Congressional Record*, May 27, 1993, pp. S6724–6726.

U.S. Supreme Court, Office of the Administrative Assistant to the Chief Justice.



# Appendix B

## *Sample Deeds of Gift*

Harvard Law School Library Form

Deposit Agreement (reprinted from *Records Management Handbook for U.S. Senators and Their Archival Repositories* (U.S. Senate Historical Office, 1992))

Deed of Gift (reprinted from *Records Management Handbook for U.S. Senators and Their Archival Repositories* (U.S. Senate Historical Office, 1992))

### HARVARD LAW SCHOOL LIBRARY FORM

TERMS OF USE OF THE PAPERS OF \_\_\_\_\_

Clear and precise instructions by the donor are necessary to insure that everyone—the donor, Library staff, and researchers—understands the terms and conditions of the use of manuscript collections at the Harvard Law School Library.

In order to draw up a mutually acceptable agreement on the use of your papers and the terms of your gift to the Harvard Law School Library we are asking you to fill out the following questionnaire. Please consider the options carefully and indicate which are in accordance with your wishes. The listed options are those usually preferred; you may, however, change the wording or choose other alternatives to serve your own purposes.

On the basis of your preferences as indicated in this questionnaire, we will draw up a Deed of Gift Agreement, which will be sent to you for your approval and signature.



## I. ACCESS

“Access” to a manuscript collection refers to permission to read all or part of it; permission to publish quotations from it is considered in question II. For access there are three alternatives; papers may be

OPEN to anyone who applies to see them,

RESTRICTED: available only under certain conditions, or

CLOSED: not available to anyone under any conditions for a specified time.

A. Do you wish to make access to these papers

Open\_\_\_\_\_ Restricted\_\_\_\_\_ Closed\_\_\_\_\_

If open, please go on to question II.

B. Restricted papers

1. If access is restricted, the restrictions will apply to

\_\_\_\_\_ all the papers

\_\_\_\_\_ the following portions of the papers (please indicate the types of material, dates, names of correspondents, or other appropriate identification): \_\_\_\_\_

2. For the papers specified in B1., what restrictions will apply during your lifetime?

\_\_\_\_\_ Available only to those who obtain your written permission

\_\_\_\_\_ Other (specify): \_\_\_\_\_

3. For the papers specified in B1., what restrictions will apply after your death?

\_\_\_\_\_ None

\_\_\_\_\_ Available only to those who obtain the written permission of (specify one or more persons):

\_\_\_\_\_ Other (specify): \_\_\_\_\_

C. Closed papers

1. If you wish to close access, what portions will be closed?

\_\_\_\_\_ All the papers

\_\_\_\_\_ The following portions (please indicate the types of materials, dates, names of correspondents, or other appropriate identification): \_\_\_\_\_  
\_\_\_\_\_

2. The papers specified in C1. are to be \_\_\_\_\_  
\_\_\_\_\_ closed for a period of \_\_\_\_\_ years.  
\_\_\_\_\_ closed for a period of \_\_\_\_\_ years, or until your death, whichever is later.  
\_\_\_\_\_ closed until your death.  
\_\_\_\_\_ closed until your death and for a period of \_\_\_\_\_ years thereafter.  
\_\_\_\_\_ other (please specify): \_\_\_\_\_

## II. PUBLICATION AND QUOTATION: COPYRIGHT

The transfer of copyright applies only to those materials in the collection (letters, diaries, account books, memoranda, photographs, literary manuscripts, etc.) personally created by the donor or donors, created for the donor or donors as work for hire, or in which copyright was transferred to the donor(s). Under the copyright law that came into effect in January 1978, the copyright, including the rights in unpublished manuscripts, belongs to the author and her or his heirs during the author's lifetime and for fifty years thereafter even though the physical property has been given away or sold. (There is a special provision in the act for unpublished works created prior to January 1, 1978, and not in the public domain. Copyright in such works will not expire until December 31, 2002, even if the author has been dead for more than fifty years.)

Over the years, copyright can create problems for a manuscript repository. A scholar who wishes to publish a quotation from a collection after its donor has died may not be able to locate the heirs, the heirs may be incompetent, or other difficulties in obtaining assents may make it impossible to utilize the material. The Library therefore encourages donors to transfer copyright to Harvard University, to be administered by the Harvard Law School Library.

The following are the usual options elected by holders of copyright in manuscript collections transferred to the Library. Please check the option that most closely conforms to your wishes.

- \_\_\_\_\_ I wish to transfer my copyright in the collection to Harvard University for the Harvard Law School Library without restriction.
- \_\_\_\_\_ I wish to transfer my copyright in the collection to Harvard University for the Harvard Law School Library. It is agreed that Harvard University will not authorize extensive quotation during my lifetime without my written permission. Readers may, however, make brief quotations (250 words or fewer in any one publication) from the documents in the collection with the prior written permission of the Curator of Manuscripts.
- \_\_\_\_\_ I wish to transfer my copyright in the collection to Harvard University for the Harvard Law School Library. It is agreed that Harvard University will not authorize publication or quotation during my lifetime without my written permission.
- \_\_\_\_\_ Other? (If you wish your copyright to descend to an heir or heirs, please specify names and addresses and any special conditions. Please also indicate after what events or after what time period, if any, prior to the expiration of copyright you are willing to transfer copyright to Harvard University.)
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

### III. COPYING AND DISSEMINATION

Unless the donor has specified to the contrary, it is the practice of the Harvard Law School Library to provide copies of documents included in open collections to researchers for their personal research use upon request. The application form used by the Library carries the legally required warning about copyright restrictions: "THIS COPY IS FOR PERSONAL USE ONLY. No part may be sold, loaned, copied or published without the express permission of the Harvard Law School Library."

- a. If you wish to impose any restrictions upon this practice, please specify those restrictions and the time period during which they will apply.
- \_\_\_\_\_



b. Under the existing copyright act, unless it has agreed otherwise, a library may make a reproduction of an unpublished work for deposit for research use in another library. Do you object to reproduction for such purpose?

I object \_\_\_\_\_ I do not object \_\_\_\_\_

IV. DISPOSITION OF DUPLICATES AND INAPPROPRIATE MATERIAL

In processing a collection the Library seeks to keep all significant material documenting the life and contributions of an individual or family or the activities of an organization. A collection may, however, include material unrelated to its major focus and to the interests of the Harvard Law School Library, or it may include duplicates. Please indicate how you wish such material to be handled.

\_\_\_\_\_ I wish inappropriate or duplicate material to be transferred to other appropriate libraries.

\_\_\_\_\_ I wish that inappropriate or duplicate material be destroyed.

\_\_\_\_\_ I wish inappropriate or duplicate material to be returned to me or to my heirs.

\_\_\_\_\_ Date \_\_\_\_\_ Signature

\_\_\_\_\_  
Address

Form to be deposited with Curator of Manuscripts and Archives.

## DEPOSIT AGREEMENT

(reprinted from *Records Management Handbook for  
U.S. Senators and Their Archival Repositories*)

THIS AGREEMENT, for the transfer and donation of the papers and memorabilia of Senator \_\_\_\_\_ to (name of repository) is hereby made and entered into this \_\_\_\_ day of 19\_\_\_\_ by and between the (name of repository), an educational institution and agency of the State of \_\_\_\_\_ hereinafter referred to as University and Senator \_\_\_\_\_, hereinafter referred to as Senator.

### WITNESSETH:

WHEREAS, this Agreement will set forth the terms and conditions for the transfer and donation to the University of the files, documents, electronic records, photographs, audiovisual materials, and memorabilia which will constitute the X Collection by Senator X.

AND WHEREAS, it is the intention of the Senator and the University to establish a research collection for the study of 20th Century political affairs and the Senator's role and impact at the local, state, national and international levels.

NOW THEREFORE, for and in consideration of the mutual covenants contained herein the parties do hereby agree as follows:

### 1. TRANSFER OF RECORDS

Senator X shall transfer, assign and convey to the University of \_\_\_\_\_ all legal title to such records and materials that the Senator and his staff determine, after consultation with the archivist, to be inactive and of historic value. Each accession group shall be accompanied by a Transfer Form, which will contain a general description of the material being transferred together with folder title listings. A Deed of Gift will be prepared subsequent to the Senator's retirement from public service.

### 2. DUTIES OF THE UNIVERSITY

The University agrees:

- 2.1 To organize, describe, and house the Collection using accepted archival conditions and standards, under the supervision of the Collection Archivist.
- 2.2 To encourage research use through the publication and distribution of finding aids and other reference materials.
- 2.3 To enhance the collection through:

a. the ongoing solicitation of papers of associates and others which document various aspects of the Senator's career, and

b. the establishment of an oral history project by the University documenting the Senator's early life, his term as Governor, and his life in and out of the United States Senate, for which the Senator will provide secretarial assistance for the transcription of the recorded interviews, and advice in securing interviews with recommended subjects.

2.4 To mount an exhibit on the Senator's gubernatorial service and statewide campaign for office within eighteen months from the date of the first transfer of materials to the University. Later, regular rotating exhibits on various aspects of the Senator's career will be mounted at the collection's repository, and traveling exhibits may be mounted as well. (This is designed to encourage research use of the collection.)

2.5 To establish an endowment fund to allow the employment of graduate history, archival, or political science students to assist in the processing of the collection and provide educational experiences for those students in working with Senator's papers.

2.6 To establish a Collection Advisory Committee to advise and assist the University and the archivist in fulfilling the objectives outlined above and in funding the work. (This is optional, depending on need.)

2.7 To provide reference service on the collection to the Senator and his staff immediately upon request.

### 3. PROCESSING

The materials received by the University may not be completely identified or arranged at the time of their transfer. The staff assigned to the collection, headed by the archivist, shall determine a final arrangement scheme and provide intellectual control over the entire collection. Processing will begin upon the arrival of the first transfer of records at the University and shall proceed in a timely fashion. The staff will identify and separate that material which is a) personal and/or family related, b) non-archival, and c) sensitive.

Material falling into a) will form a separate series within the collection. Material falling into category b), consisting of duplicate and redundant records and records whose nature does not warrant their retention in perpetuity as part of the collection will be offered back to the Senator or his designee or heirs. Material falling into category c), including classified records, will be restricted according to legal requirements and the wishes of the Senator as set forth in the Deed of Gift and modified by Transfer Forms.



#### 4. COLLECTION ADVISORY COMMITTEE

A collection advisory committee will be created to advise and assist the University and the archivist in fulfilling the objectives outlined above. The maximum number of members will be seven (7). Members of the Advisory Committee will initially be named by the President of the University in consultation with the Senator and thereafter on the majority recommendation of the Advisory Committee. Members of the Committee will include at least one individual from each of the following categories: a) the family and staff of the Senator, b) the University administration, c) Historians, d) the collection Archivist, e) Archivists and Librarians.

#### 5. ARCHIVIST

5.1 The University will create a full-time permanent position of Collection Archivist. (In this instance, the university does not have the necessary expertise already on the staff. Other institutions might have it.) This individual will be a professionally trained archivist experienced in working with large modern political collections and possessing an expertise in political history.

5.2 The archivist will assist in establishing records retention schedules and devise a plan for the transfer of records to the University which are of permanent historic value and no longer required for the day-to-day operations of the Senator's office. The archivist will make periodic trips to Washington, D.C. to provide on the scene records management services.

5.3 The University will fund the salary, all in-state travel, and travel to and from Washington, D.C. (Alternatively, the member's office may wish to cover travel to Washington by putting the archivist on the staff payroll for the purpose of providing reimbursement for per diem expenses.) The Senator's office will provide office space, clerical assistance, and a per diem while in Washington working on the project.

5.4 The University will fund any travel to one or more model repositories deemed necessary for the purposes of planning, organization, and the evaluation of policies and procedures.

#### 6. DUTIES OF THE UNIVERSITY

6.1 The University will publicize the acquisition of the collection via mailings, brochures, and exhibits of papers and memorabilia.

6.2 The Archivist will produce a scholarly monograph on the Senator's gubernatorial administration, utilizing the records currently stored as one of the



primary sources. (This clause is somewhat unique. Most institutions would encourage research and writing by a wide range of students and the archivist would not be charged with writing a biography, even though a good deal of the information will be compiled in the normal course of processing the collection and preparing a finding aid.)

6.3 The work of the archivist will be supported by one staff assistant. Additional staff will be supplied on an as-needed basis.

## 7. ENDOWMENT FUND

The University will establish an endowment fund to support the hiring of graduate students to assist in processing the collection and to fund other activities approved by the Advisory Committee.

## 8. NEWSLETTER

The University will begin publication of a regular newsletter regarding the project and include news on reference use, processing progress, exhibits, and the oral history project once membership in a volunteer support organization reaches two hundred and fifty. (This support agreement is also distinctive to this example. Such a financial commitment will vary according to the needs of the University.) Information about the collection also will be publicized in appropriate journals and newsletters, the National Union Catalog of Manuscript Collections, the Senate Historical Office database, and any National bibliographical databases as appropriate.

## 9. IN-STATE TRANSFER OF RECORDS

The University will transfer all records currently housed within the state to the repository.

## 10. PHOTOCOPIES

The University will produce up to one thousand photocopies of collection material for the Senator at no charge. Additional copies will be supplied for the standard fee.

## 11. PUBLICATIONS

One hundred copies of any publications produced by the repository regarding the collection will be supplied to the Senator at no cost. Additional copies will be supplied at cost.

12. STORAGE SPACE

The University will ensure that proper storage space in the Library or other suitable space is available for the records as they are transferred.

13. GOVERNING LAW

This agreement shall be governed and construed under the laws of the State of \_\_\_\_\_.

IN WITNESS WHEREOF, the parties have caused this covenant to be duly executed the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

Signature of both parties: \_\_\_\_\_  
\_\_\_\_\_

DEED OF GIFT  
GIFT OF PAPERS AND OTHER HISTORICAL MATERIALS  
(reprinted from *Records Management Handbook for  
U.S. Senators and Their Archival Repositories*)

1. Senator \_\_\_\_\_ (hereinafter referred to as the Donor), hereby give, donate, and convey to the \_\_\_\_\_ Library (hereinafter referred to as the Donee), my papers and other historical materials.

2. Title to the Materials shall pass to the Donee upon their delivery to the Donee. Copyright in that portion of the Materials in which copyright resides is retained by the Donor. (See NOTE previous section.) Upon the Donor's death, copyright is transferred to the \_\_\_\_\_ Library of \_\_\_\_\_ University.

3. Following delivery, the Materials shall be maintained by the Donee in the \_\_\_\_\_ Library. At any time after delivery, the donor shall be permitted freely to examine any materials during the regular working hours of the \_\_\_\_\_ Library.

4. It is the Donor's wish that the Materials be made available for research as soon as possible following their deposit in the \_\_\_\_\_ Library. At the same time, the Donor recognizes that the Materials may include some information which, at present, should not be released. Accordingly, the Donee shall, for the present, restrict access to the following classes of materials:

a. Papers and other Materials, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy or a libel of a living person.

b. Materials relating to the personal, family, and confidential business affairs of the Donor or other persons referenced by the Materials.

c. Material relating to investigations of individuals and organizations, to proposed appointments to office, or to other personal matters affecting individual privacy.

d. Materials relating to the work of political consultants in campaigns.

e. All office financial accounting and personnel records found in the Materials will be sealed and destroyed after (determine the date).

5. It is the responsibility of the Donee to identify the classes of Materials listed in Paragraph 4. This responsibility will be administered in good faith to the best of the Donee's abilities within the policies of the Library. (Or other language to reflect that this is a difficult responsibility and even with careful stewardship, in the unlikely event that something may happen, this contract is not voided.)



OR

5. The Donor shall have the Materials reviewed to identify the classes of Materials listed in Paragraph 4 and any other Materials which should be restricted. The type and location of restricted materials shall be communicated to the Donee as soon as possible as no part of the Materials will be opened until this review has taken place.

6. Materials which have been restricted from access in accordance with Paragraph 4, sections a—d, can be reviewed from time to time and opened to public access when both Donor and Donee agree that conditions no longer require restrictions. Otherwise, these Materials shall be restricted until

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There are several options available for paragraph 6:

a. A date can be named.

b. If the classes listed in Paragraph 4, sections a—d have different lengths of time restrictions, the wording in Paragraph 6 can follow each section. Lengths of restrictions normally run from five to twenty years.

c. Or, restrictions can run from when the material was created. For example, the specified material is closed for “X” number of years from date of creation (usually twenty years).

7. Materials restricted shall not be made available for inspection, reading, or use by anyone except the regular employees of the Donee, in the performance of normal archival work on such Materials, and the Donor, or persons authorized by him in writing to have access to such materials.

8. The Donee reserves the right to restrict access until such time as the Materials which have been restricted from access in accordance with Paragraph 4 are identified and until the Materials have been fully processed and can be made available to the researcher.

9. Subject to the restrictions imposed herein, the Donee may dispose of any of the Materials which the Donee determines to have no permanent value or historical interest. If in the opinion of the Donee the Materials should be preserved in a different physical format, such as microfilm, the Donee may perform the necessary processing and the original materials shall be disposed. During the lifetime of the Donor, and at the Donor’s request, the Materials proposed for disposal shall be returned to the Donor.

10. As required by Senate Rule XL, Section 5, the Donee stipulates that any machine readable records shall be used only for research purposes and that lists of individual names and addresses found in the records in whatever format shall not be provided to other parties for political or profit purposes.



11. As provided by Senate Rule XXVI, Section 10 (a), all official committee records are the property of the Senate and when found in the Materials will be returned to the appropriate committee, and the Senate Archivist will be notified.

12. In the event that the Donor may from time to time hereafter, give, donate, and convey to the Donee, for deposit in the Library, additional papers and other historical materials, title shall pass to the Donee upon their delivery and this instrument of gift shall be applicable to all additional materials.

Date: \_\_\_\_\_

Signatures of both parties:

\_\_\_\_\_

\_\_\_\_\_



# Appendix C

## *Selected Inventories of Collections in Repositories*

The William Henry Hastie Papers, Harvard Law School Library

The Papers of Simon E. Sobeloff, Library of Congress, Manuscript Division

The Papers of J. Skelly Wright, Library of Congress, Manuscript Division

### THE WILLIAM HENRY HASTIE PAPERS

The papers of William Henry Hastie (1904–1976), attorney, educator, civil servant, judge, were presented to the Harvard Law School Library as a gift between 15 December 1979 and 1 July 1981 by Judge Hastie’s daughter, Karen Hastie Williams, and his son, William Henry Hastie, Jr.

Access to these papers is governed by the rules and regulations of the Harvard Law School Library in general and its Manuscript Division in particular. The Harvard Law School Library holds the copyright to the unpublished writings of William Henry Hastie in these papers and in other collections in its Manuscript Division.

Linear feet of shelf space occupied:	74
Approximate number of items:	39,000

### SCOPE AND CONTENT NOTE

The papers of William Henry Hastie span the years 1916 to 1976, with the bulk of the papers falling into the period from his nomination to the bench of the U.S. Court of Appeals for the Third Circuit by President Harry S. Truman, 15 October 1949, to the time of his death, 14 April 1976.

The collection includes correspondence (both letters received and carbons of letters sent); handwritten, typed, and printed drafts; slip sheets of legal opinion; lists and tabulations; memoranda; reports; dockets; agenda of meetings; research materials and notes; clippings; legal and legislative documents; other printed items; manuscripts of published and unpublished writings; and a small amount of memorabilia such as honorary degree certificates. Photographic items have been transferred to the Law Library's Art Collection.

In sheer physical volume, three-fourths of Judge Hastie's papers are Court-related (67 of the 110 manuscript boxes plus 22 cartons of briefs holding one cubic foot each). Together they constitute a fine documentation of the workings of a U.S. Appeals Court and of the day-by-day judicial and administrative activities of one of its judges.

The files of Judge Hastie's own opinions are contained in 28 manuscript boxes and cover the October terms 1949 to his death in April 1976. These files are arranged in two alphabets: (1) Opinions by Hastie while sitting on his own Court, and (2) Opinions while sitting on other Federal Courts. The listing of all of the cases includes the citations from the Federal Reporter, type of opinion (opinion, dissent, etc.), and in the case of sittings on other Courts, the name of the Court. There is also an incomplete set of slip sheets, contained in 11 additional manuscript boxes.

Judge Hastie's opinion files include his opinions (for the majority), concurring opinions, dissents, concurring dissents, orders, and a considerable number of per curiams. Unlike Justices Louis Dembitz Brandeis and Felix Frankfurter of the Supreme Court of the United States, who kept the first drafts of all of their opinions, Hastie kept drafts only occasionally, chiefly for opinions which he wrote while sitting in Federal Courts other than his own. Unlike Judge Learned Hand, U.S. Court of Appeals Judge for the Second Circuit for thirty-six years, who retained a complete set of his Court memoranda, Judge Hastie did not keep his memoranda of the judicial conferences. Essentially, Judge Hastie retained carbon copies of the final typed draft of his opinions together with other items relevant to a particular case such as research notes of his law clerks and any correspondence he had with his fellow judges. Such correspondence might relate to questions about a particular point in Hastie's draft; to phrasing of a particular passage; to matters of rehearing, filing, and reporting of a given case; or the question of a hearing en banc.



Included may also be expressions of admiration from his Brethren for an especially fine or incisive opinion in a difficult case; printed background material; Hastie's own notes to his clerks; copies of dissents of fellow judges, or, in case of a dissent by Hastie, copies of the opinion of the majority; correspondence with officers of the Court; copies of affidavits and lower Court opinions; occasional typed briefs; and clippings.

Opinions which Hastie wrote for which he retained more than the usual amount of material are: *Braunfeld v. Gibbons*; *Bruszewski v. United States*; *Eastern Freight-Ways v. United States*; *Eisenberg v. Hartz Mountain Corporation*; *Foster v. Dravo Corp.*; *Green v. United States*; *Karp v. Collins*; *Lemon v. Kurtzman*; *Lemon v. Sloan*; *North Carolina Utilities Commission v. FCC*; *In re Penn Central Transportation Co.*; *Pennsylvania Association of Township Commissioners v. Labrum*; *Pickus v. Board of Parole*; *Sinatra v. New Jersey Commission of Investigation*; *United States v. United Steelworkers of America*; *United States ex rel. Phelan v. Brierly*.

Of special interest are Judge Hastie's opinions written for the Temporary Emergency Court of Appeals. This Court was created by Congress under the Economic Stabilization Act Amendments of 1971, and it has exclusive jurisdiction of all appeals from the District Courts of the United States in cases and controversies arising under the economic stabilization laws; it consists of eight district and circuit judges designated by the Chief Justice. Hastie had been appointed to this Court by Chief Justice Warren Burger in 1972, and he sat on it until his death in 1976. Some of the TECA cases for which he retained more than the usual amount of material are: *Baldwin County Electric Membership Corp. v. Price Commission* (dissent); *Consumers Union of the United States, Inc. v. Sawhill* (dissent); *Exxon Corp. v. FEA* (dissent); *Mass Retailing Institute, Inc. v. Cost of Living Council* (per curiam); *Sylvan Seal Milk, Inc. v. Milk Control Commission* (concurring opinion); *United States v. Colwell* (opinion).

In addition to his own opinions, Hastie retained copies of draft opinions written and sent to him for comment by fellow judges, essentially by his Brethren on the Third Circuit. Many of these cases are appeals on which Hastie sat but on which one or the other judge of the customary three-judge bench wrote the opinion. Included in this SERIES is correspondence relating

to these cases, and motions to dismiss and petitions for rehearing, including Hastie's decisions on these motions and petitions.

Hastie's opinion files are complemented by administrative files relating to matters concerning the Court of Appeals judges of the Third Circuit and their staffs, the U.S. District Courts within the Third Circuit and their respective judges and officers, and the relations between the Third Circuit and the Administrative Offices for the Circuits in Washington. Some of the categories included in the SERIES are: memoranda of Hastie as Chief Judge; reports of committees and subcommittees; assignments of cases and Hastie's own assignments to sit on other Courts; designations; dockets; programs of and correspondence about the annual Judicial Conference of the Third Circuit and of the United States; analyses of new bills affecting the Court such as the Criminal Justice Act of 1964 and the Omnibus Judgeship Bill of 1969, including the text of Hastie's statement of 6 May 1969 on the latter bill before the U.S. Senate Judiciary Subcommittee on Improvements in Judicial Machinery; subject files on bail reform, bankruptcy, judicial conduct standards, judicial salaries; and memorials written by Hastie upon the death of colleagues.

Three groups loom largest among the administrative Court files: correspondence on hiring of law clerks (39 folders), the Judicial Council files (18 folders), and the Temporary Emergency Court of Appeals files (16 folders). Extraneous matters which Hastie had to deal with were plans for the new Federal Courthouse in Philadelphia, hiring of nonjudicial personnel, and furnishings for offices.

The Hastie Court files are a rich source for students of the workings of a lower Federal court and the personalities which give flavor to such a Court. Judge Hastie emerges as a dignified, conscientious judge who researched his cases thoroughly, who was a perfectionist in the art and craft of opinion writing, and a compassionate colleague. In addition, they attest to the respect in which he was held by fellow Court members and by the legal community outside the courtroom.

Hastie's papers relating to Non-judicial, Non-segregation Activities/Subjects cover a wide spectrum of interests and involvements. They include correspondence, agenda, minutes of meetings, reports, memoranda, notes, and newspaper clippings; and they range from his role as delegate to the 1961



African Conference on the Rule of Law in Lagos, Nigeria, to his membership on boards of trustees, directors, commissions or committees of institutions such as Amherst College, The American Law Institute, the Caribbean Commission, the Council on Legal Education for Professional Responsibility, Inc., the Harry S. Truman Library Institute, the Harvard Law School Visiting Committee, Howard University, National Lawyers Guild, Practicing Lawyers Institute, and the Virgin Island Company. Other files document his deep concern, as a resident of Philadelphia, with community issues and institutions such as the Albert Einstein Medical Center, Defender Association of Philadelphia, Fellowship House, Inc., Free Library of Philadelphia, Youth Conservation Commission of the Department of Welfare, Otto Haas Charitable Trust, Philadelphia Council for Community Advancement, Temple University, and the University of Pennsylvania. Of special interest are materials relating to his Governorship of the Virgin Islands which include the reprint of the Senate Hearings on his appointment; five folders relating to a trip he took to India and Malaya, in 1965, under the auspices of the United States Information Service; and three folders relating to the Commission on White House Fellows, to which he was appointed by President Lyndon B. Johnson and on which he served from 1965 to 1969.

Writing, lecturing, and delivering occasional talks was another important activity of Hastie. His *WRITINGS, LECTURES, SPEECHES* SERIES includes manuscripts in holograph, typed, and printed form; correspondence relating to arrangement for delivery and for publication of special lectures; notes; and invitations to speak. The SERIES is of specific significance as it contains a very large number of occasional talks which were not published. Hastie's drafts of his manuscripts, with their many corrections and additions, reflect Hastie's striving for the perfect word or the perfect sentence. Major lecture series which he delivered were the Oliver Wendell Holmes, Jr., Devise Lectures at the Washington University School of Law (1964); the Owen J. Roberts Memorial Lecture at the University of Pennsylvania Law School (1973); the Francis Biddle Memorial Lecture at the Harvard Law School (1974); and the David C. Baum Memorial Lecture on Civil Rights and Civil Liberties at the University of Illinois College of Law (1975). In addition, Hastie read a paper at the Harvard Law School's John Marshall Bicentennial Conference (1955). Included in the miscellaneous writings are manuscripts of book reviews. Some of Hastie's occasional talks are dated and/or carry titles; some are unidentified, including fragments. There are fairly extensive notes on

the lectures which he delivered at the Salzburg (Austria) Seminar in American Studies, where he was a faculty member of the legal session in the summer of 1957. The profusion of occasional talks and their predominantly civil-rights oriented topics demonstrate Hastie's willingness and courage to speak out publicly on controversial issues of his time.

Hastie's *ACTIVITIES/SUBJECT* SERIES, which includes the correspondence pertaining to specific activities and subjects, is complemented by his *MISCELLANEOUS CORRESPONDENCE* SERIES. This particular group was kept by Hastie as a strictly chronological file, and this arrangement has been preserved. Some of this correspondence also covers and frequently overlaps concerns represented in more detail in the last four SERIES, which deal with segregation/discrimination and personal-biographical matters. Both incoming and copies of outgoing letters are included, with Hastie's reply generally attached to the front of the incoming item.

The one hundred and eighty-two folders in the *MISCELLANEOUS CORRESPONDENCE* SERIES cover the period December 1949 to Hastie's death in April 1976; one folder contains earlier letters, one folder posthumous correspondence. This SERIES represents day-by-day mail routinely received from friends, casual acquaintances, and strangers. It pertains to such matters as social, professional, and media engagements, and a variety of civil rights concerns. It includes requests for recommendations, for contribution of articles, and for photographs of himself; appeals for money; invitations to join various professional or civic organizations; and a sizable amount of congratulatory letters relating to some of his lectures, honorary degrees, and special awards such as the Biddle Lecture (1974) and Philadelphia Award (1975), and the honorary degree from Harvard (1975).

Prominent figures represented in *MISCELLANEOUS CORRESPONDENCE* are civil rights leaders Ralph Bunche, Pauli Murray, and Walter White; U.S. Supreme Court members Felix Frankfurter, Arthur J. Goldberg, and Warren E. Burger; law professors Derrick A. Bell, Jr., Derek C. Bok, Paul A. Freund, Erwin N. Griswold, Fowler V. Harper, and Albert N. Sacks; writers, academics, political figures, and diplomats like Chester Bowles, Henry Steele Commager, Sam Ervin, Averill Harriman, Hubert H. Humphrey, Nelson Rockefeller, Eleanor Roosevelt, and Robert Penn Warren. Of special interest is a telegram from Dr. Martin Luther King, ca. 15 January 1957, seek-



ing Hastie's "expression of support and advice" for a conference of black civil rights leaders of about a dozen southern states who were planning to meet in Atlanta to discuss the flagrant and defiant disregard in the South of Supreme Court decisions on transportation. Hastie's reply was a night letter addressed to the "Leadership Conference, Attn.: Rev. M.L. King," which read: "Like founders of our country and signers of Declaration of Independence you are risking your lives and substance that Americans may live as free men under law in democratic society. All who believe our country and its institutions are worth preserving should respect, admire and support you. William H. Hastie." Hastie retained his holograph draft of this night letter also, which shows a number of changes he made before he was satisfied.

Hastie's segregation/discrimination files fall into three groups: NAACP (National Association for the Advancement of Colored People) files, segregation/discrimination in the Armed Services, and other miscellaneous subject files. Hastie was a member of the NAACP from the early 1930s until his death in 1976 and served on its board of directors during much of that time; he also served on the board of directors, from 1941 to 1968, of the NAACP Legal Defense and Educational Fund, Inc. His files show his close ties with the NAACP and his deep involvement in its struggles. Materials included in the *NAACP SERIES* are Hastie's correspondence and memoranda exchanged with members of the two boards such as Allan Knight Chalmers, William T. Coleman, John W. Davis, Jack Greenberg, Thurgood Marshall, Henry Lee Moon, Arthur B. Spingarn, Earl Weaver, Walter White, and Roy Wilkins. Correspondence relates to such matters as meetings; officers and staff; local branches; projects to be supported; application for grants; unfavorable news media coverage; harmonious cooperation between the Association and the "Inc. Fund" (as the Legal Defense and Educational Fund was known among board members); problems of division of spheres of activity, e.g., Fund was to handle all segregation cases. Two folders contain correspondence and memoranda re *Brown v. Board of Education* and show clearly the part Hastie played, namely in reviewing the briefs prepared by Thurgood Marshall and others and in fund-raising efforts. A large segment of papers consists of mimeographed material, e.g., reports, agenda and minutes of board meetings, income statements, committee membership lists, and petitions. Additional folders contain clippings; typescripts of pieces and statements of Hastie in support of Federal antilynching legislation, 1940; papers relating to Hastie's involvement in the

North Carolina teachers' salary fight, 1933; and Hastie's service as a member of the Spingarn Medal Award Committee, 1969-75.

In December 1940 President Franklin Delano Roosevelt appointed Howard Law School Dean William Henry Hastie Civilian Aide to the Secretary of War to detect and investigate discriminatory practices regarding blacks in the military, to make recommendations to integrate the Armed Services, and to monitor this process of integration. Two years later, on 5 January 1943, Hastie handed his resignation to Secretary of War Henry L. Stimson. In five successive releases to the press Hastie stated that he had been largely ignored and that the Armed Services had consistently refused to clear with him policies affecting the training, housing, and utilization of black officers and enlisted men, in particular those in the Army Air Force. Hastie felt that by taking this public stand and by calling the attention of the whole nation to this untenable situation he could be more effective than by remaining in a post where he had no influence or power to affect any changes.

In June of that same year, 1943, the NAACP held a three-day emergency meeting in Detroit on the "Status of the Negro in the War for Freedom"; this meeting replaced the annual July conference of the NAACP. The climax of the meeting was the presentation to Hastie of the Arthur B. Spingarn medal in Briggs Stadium [home of the Detroit Tigers] before an assembly of 50,000 persons. The Spingarn award was instituted in 1914 by Joel E. Spingarn, then Chairman of the NAACP; it is a gold medal awarded annually by the NAACP Board of Directors "to an American Negro who has made the highest and noblest achievement during the preceding year or years." Announcing this presentation, the Award Committee said: "William Henry Hastie is selected as Twenty-eighth Spingarn Medalist for his distinguished career as jurist and as uncompromising champion of equal justice . . . His every act, and particularly his protest against racial bigotry in an army fighting for the preservation of the democratic processes, has established a standard of character and conduct which the Spingarn Medal Award Committee is honored to recognize by the selection of Judge Hastie . . ."

Hastie's files documenting his two years in the highest Cabinet post any black had held in this country up to that time are perhaps the most fascinating of all his papers. They include historical materials he gathered and took notes on and files he assembled on a multitude of facets of discrimination. One such



file is alphabetically subdivided by categories, e.g., blood plasma; medical officers and nurses; military police; officers candidate program; special services and recreation; transportation discrimination; troop unit bases. Additional folders contain testimonies by black soldiers regarding specific instances of discrimination and violence perpetrated against them and a letter dated 26 November 1943 of author Alexander Haley, who was serving in the U.S. Coast Guard, addressed to Hastie, describing the situation of the Black in the Service. Hastie's memoranda to various commanders show his compassion for the plight of the black serviceman, his concern with the urgency of changing the status quo, and his frustration over being brushed aside or ignored altogether. His "Personal File III" contains items relating to his resignation, e.g., correspondence, copies of his letter of resignation, memoranda, statements, clippings, copies of the full text of his five press releases, and letters he received expressing regret over his decision and commendation for his courage, together with carbons of Hastie's replies, also some material of his own follow-up on the integration process in the military during the remainder of World War II.

The last group, *SEGREGATION/DISCRIMINATION: MISCELLANY*, relates to specific civil rights areas which were of concern to Hastie, e.g., housing; segregation in recreation in the District of Columbia; the absence of *Crisis*, the national organ of the NAACP, from public school libraries; and enforcement of the *Brown v. Board of Education* decision. Four folders contain materials on legal cases of the 1930s and 1940s in which Hastie represented the appellants, e.g., *Street v. Tucker*; *Hocutt v. Wilson*; a 1933 discrimination case against the University of North Carolina; and *Mitchell v. Wright*. Hastie retained ten folders of correspondence, memoranda, transcripts of papers, bibliographies and reports of the so-called Haverford Group of MARC (Metropolitan Applied Research Center, Inc., New York, N.Y.), a discussion group of which Hastie was a member beginning with 1969. One folder documents Hastie's Chairmanship of the 1965 White House Conference "To Fulfill These Rights," an administration-of-justice panel which addressed itself to the problems of crime and police-community relations; included in the folder are two letters from Vice President Hubert H. Humphrey thanking Hastie for his participation. There is also one folder containing exchanges between Hastie and former President Truman on 1960 civil rights issues.



The last group of papers, *PERSONAL-BIOGRAPHICAL*, rounds out the picture of Hastie as he emerges in the preceding SERIES. There is a scattering of school items; folders relating to his public and judicial appointments including congratulatory letters; folders relating to testimonial dinners in his honor and to honorary degree ceremonies; biographical sketches; a scrapbook covering his years as U.S. District Judge in the Virgin Islands; documentation of his participation, on behalf of Harry S Truman, in the 1948 presidential campaign including personal expressions of gratitude by Truman; and a copy of Hastie's acceptance remarks at the ceremony at which he received the prestigious Philadelphia Award, in April 1975, one year before his death. Printed items include transcripts of hearings held on some of his appointments, citations and certificates of membership, copies of tributes to Hastie spoken at memorial services held in his honor, and miscellaneous clippings.

The November 1976 issue of the *University of Pennsylvania Law Review* (Vol. 125, No. 1) is dedicated to the memory of Judge Hastie and carries tributes by Dean Louis H. Pollak, Judges Collins J. Seitz and Spottswood W. Robinson III, and Roy Wilkins. In his own tribute Dean Pollak says of the essays of the other three men that they "illustrate especially Hastie's dominant attributes: his intellectual power, his unflagging energy, and his unrelenting commitment to principle." The papers of Judge Hastie here at the Harvard Law School Library also superbly document these attributes, and they constitute a rich source for the study of this man of personal humility and of towering moral and intellectual stature.

## DESCRIPTION OF SERIES

<u>Container Nos.</u>	<u>Series</u>
<u>MS Boxes</u>	
1-1 to 35-11	<p>I. U.S. Circuit Court of Appeals (3d Circuit), 1949–1976.</p> <p>35 MS boxes.</p> <p>1. Opinions.</p> <p>Final typescript of all of Judge Hastie’s opinions, memoranda, orders, and per curiams, some holograph drafts; research notes of WHH and of his law clerks; research materials; correspondence with his “brethren” regarding particular cases in which WHH was writing; some correspondence about publication of opinions in <i>Reporter</i> series; “fan” mail. Arranged alphabetically by name of case.</p> <p>2. Loose Briefs.</p> <p>Very small group of briefs in typed or photocopy form, arranged alphabetically.</p> <p>3. Administrative Matters.</p> <p>Correspondence; subject files; reports; agenda of the annual Judicial Conference of the Third Circuit; statistics; court calendars; designations; dockets; lists; Judicial Council matters; U.S. Temporary Emergency Court of Appeals matters; surveys. This group is particularly strong for WHH’s chief and senior judgeship years (1969–1976).</p> <p>4. Correspondence re Law Clerks.</p> <p>Correspondence re hiring of law clerks; requests for WHH’s recommendations from subsequent prospective employers; administrative matters re positions of clerks. Seven folders contain job applications. Arranged chronologically by year of clerkships, 1951/52 to 1975/76.</p> <p>5. Correspondence re Other Personnel.</p> <p>Correspondence relating to the hiring of non-judicial personnel and to problems arising during their employ-</p>

ment; matters relating to upgrading of various categories of employees. Arranged alphabetically.

#### 6. Miscellany.

Mainly items relating to furnishing and redecoration of specific offices and judicial chambers; travel vouchers and correspondence re professional trips; matters relating to use of telephones.

36-1  
to  
45-12

#### II. William Henry Hastie Sitting in Courts Other than U.S. Circuit Court (3d Circuit), 1949–1976. 10 MS boxes.

Final typescript of Judge Hastie's opinions including also large numbers of first drafts; memoranda, research notes, and outlines; some correspondence re arrangements for these sittings; "fan" mail. Arranged alphabetically by name of case.

46-1  
to  
57-4

#### III. Set of Printed Opinions by Court Terms, 1950–1972. 12 MS boxes and 4 folders.

Final slipsheets of opinions. Arranged chronologically [not a complete set].

57-5  
to  
68-2

#### IV. Opinions by Others, 1950–1975.

10 MS boxes and 5 folders.

Drafts of opinions of judges on the Court of Appeals (3d Circuit) other than WHH, and of judges on other Federal Courts, including correspondence with WHH regarding their opinions; motions to dismiss and petitions for rehearing, including WHH's decisions on these motions and petitions. Arranged alphabetically by name of case.

68-3  
to  
86-12

#### V. Activities/Subjects: Non-Judicial, Non-Segregation/Discrimination, 1930–1976. 17 MS boxes and 25 folders.

Correspondence relating to WHH's membership in professional associations and in other societies, organizations, and clubs; to obligations growing out of his membership on boards of trustees of educational and other institutions; to participation in conferences, on councils and



commissions; to involvement in community affairs; to alumni matters. Agenda, minutes of meetings, reports. Typescripts of proceedings of hearings. Arranged alphabetically by subjects.

- 86-13  
to  
90-7 VI. Writings, Lectures, Speeches, 1937-1976. 3 MS boxes and 10 folders.  
Manuscripts of writings of WHH in holograph, typed, near-print, and printed form; also correspondence relating to arrangement for delivery and for publication of special lectures; invitations to speak. Some notes on specific subjects. Dated writing is arranged chronologically, followed by unsorted, undated pieces.
- 90-8  
to  
99-20 VII. Miscellaneous Correspondence, 1931-1976. 9 MS boxes and 6 folders.  
Correspondence from individuals relating to a variety of matters, e.g., political, race relations, civil liberties in general, personal. Requests, invitations, congratulatory items, appeals for monetary contributions, news from or about friends. Arranged alphabetically.
- 100-1  
to  
102-7 VIII. National Association for the Advancement of Colored People, 1933-1975. 2 MS boxes and 7 folders.  
Correspondence, memoranda, legislative documents, committee reports, statements on local matters in particular geographical areas. Seven folders relate specifically to Legal Defense and Educational Fund, 1941-1974.
- 102-8  
to  
104-11 IX. Segregation, Discrimination: Armed Services, 1940-1945. 1 MS box and 19 folders.  
Memoranda and correspondence of WHH while serving as Civilian Aide in the War Department. Individual case files, documents, reports, press clippings. Holograph notes of WHH and drafts of his letters of resignation (1942, 1943). Arranged chronologically by personal files, followed by subject files.

104-12 to 107-3	X. Segregation, Discrimination: Miscellany, 1935-1975. 2 MS boxes and 6 folders. Drafts, research notes, documents, memos, clippings, statements re various aspects of discrimination, e.g., in housing, private schools, recreation. Arranged alphabetically by subject areas.
107-4 to 110-18	XI. Personal-Biographical, 1916-1976. 2 MS boxes and 30 folders. Biographical sketches; letters on appointments to Virgin Islands Governorship and to U.S. Court of Appeals Judgeship; WHH participation in President Harry S. Truman's 1948 presidential campaign; programs of and correspondence relating to honorary degree ceremonies; correspondence re honorary and testimonial dinners; photographs; clippings; obituaries and programs of memorial services for WHH.

Container Nos.  
Paige Boxes

Series

1 to 22	Printed Briefs, 1950-1976. 22 Paige boxes. Briefs of approximately 280 cases in which Judge Hastie wrote opinions. Arranged at random, but indexed alphabetically by case, with Paige box location, on pages 127-33 of this INVENTORY.
23	Opinions. 1 Paige box. Miscellaneous printed opinions.

The Papers of Simon E. Sobeloff, Library of Congress,  
Manuscript Division

THE PAPERS OF SIMON E. SOBELOFF

The papers of Simon E. Sobeloff (1894–1973), lawyer, Solicitor General of the United States, and judge of the U.S. Court of Appeals for the Fourth Circuit, were given to the Library of Congress in 1980 by his daughters Ruth Mayer and Evva Vale.

Literary rights in the unpublished writings of Simon E. Sobeloff in these papers and in other collections of papers in the custody of the Library of Congress are dedicated to the public, but reserved by the donors during their lifetime.

The Simon E. Sobeloff papers have been described in the *Quarterly Journal of the Library of Congress*, v. 31, Oct. 1974, and in *Library of Congress Acquisitions: Manuscript Division*, 1982, pp. 23–26.

Linear feet of shelf space occupied:	158
Approximate number of items:	95,000

SCOPE AND CONTENT NOTE

The papers of Simon E. Sobeloff span the years 1882 to 1973, but are concentrated in the period 1950 to 1973. Sobeloff’s duties as U.S. Solicitor General are represented in the collection; however, his tenure as judge and chief judge of the Fourth Circuit Court of Appeals is particularly extensive and comprehensive.

The papers are divided into seven series: Appointment Books, General Correspondence, U.S. Solicitor General Files, U.S. Court of Appeals Files, Speeches and Writing Files, Subject File, and a Miscellany.



Few items for Sobeloff's formative years and early professional career are contained in the collection. Letters in the General Correspondence series (1930–73) contain some references to his early childhood in Baltimore, his experiences as a page in the U.S. House of Representatives, and his early law practice. The correspondence concerns both his professional duties and his social activities. The letters in this series complement correspondence found in the Solicitor General Files, U.S. Court of Appeals Files, and the Speeches and Writings File. Correspondents in these series include the Justices of the U.S. Supreme Court, judges of the U.S. Courts of Appeals and circuit courts, and various political, government, and literary figures. Correspondents include David Bazelon, Warren Burger, William O. Douglas, Dwight D. Eisenhower, Felix Frankfurter, Clement F. Haynsworth, Jr., J. Edgar Hoover, Jacob Javits, Robert F. Kennedy, Harold Leventhal, Theodore McKeldin, H. L. Mencken, John J. Parker, John Paul, Morris Soper, Dorsey Watkins, and Skelly Wright.

The Solicitor General Files (1953–56), while not extensive, reveal the sophistication with which Sobeloff conducted the office, how he performed the delicate task of deciding which cases the government should appeal, and when in fairness it should even confess error. There are files for the cases which Sobeloff either argued personally or was on the brief before the Supreme Court. These include notes and drafts of briefs detailing his methods of argumentation as well as some correspondence relating to the cases. Among the most significant cases were those concerning actions of the Subversive Activities Control Board, the validity of trying a civilian by court-martial, federal preemption of State sedition laws, and segregation in the public schools. When the Supreme Court in May 1954 outlawed segregation in the public schools, it ordered reargument the following term on the question of an appropriate decree to implement the decision. Opposing counsel were invited to address the Court on this point and Sobeloff appeared for the government. President Eisenhower took a personal interest in this case. The Solicitor General was called to the White House on a Saturday morning and they went over the brief together. A copy of the brief with Eisenhower's penciled-in notations is in the papers along with other related material on the segregation issue.

Sobeloff's confirmation as a judge of the Fourth Circuit Court of Appeals was held up a year by several members of the Senate Judiciary Committee,

mainly because of his role in the desegregation decision and his views on other controversial issues of the day. This was a trying period for him and can be followed in the correspondence and the published hearings contained in the U.S. Court of Appeals Files series (1955-73). Desegregation of the schools was a continuing problem for Sobeloff. As judge and chief judge of the Fourth Circuit he handed down several important decisions in cases from counties in Virginia and North Carolina, striking down certain school districting plans and ordering a more speedy implementation of desegregation. This series contains a very complete record of Sobeloff's seventeen years on the federal bench and provides the opportunity for a close study of the judicial process in one appellate court. The case files include correspondence among the judges, intercourt memoranda, bench memoranda, notes, draft opinions, and other related material produced and collected by Sobeloff. Also included are records of the judicial conferences, which provide an account of the topics of interest discussed at the annual meetings of the judges of the Fourth Circuit. The U.S. Judicial Conference files contain correspondences, notes, and working drafts for various advisory committees upon which Sobeloff served. The series is completed with an office file of personnel records, court dockets and other scheduling matters, financial records, and general reference material relevant to the operation of the court.

Throughout his public life, Sobeloff made a great number of speeches both before the legal profession and various philanthropic organizations. Correspondence, notes, and rough drafts are included with these speeches, which make up the greater part of the Speech and Writings File (1928-72). The writings consist of book reviews and scholarly articles which appeared mainly in legal journals. Major subjects include criminal insanity, courts and the press, civil liberties, freedom and security, administration of immigration laws, the criminal code, and the work of the Solicitor General's office. At the end of this series is a group of speeches written by Sobeloff for the use of others. The most significant of these speeches are those for his close friend and advisee, Governor of Maryland Theodore McKeldin. Sobeloff's association with McKeldin was undoubtedly a factor in his appointment as the U.S. Solicitor General. He had met General Eisenhower in Paris while traveling with the Governor, and McKeldin later nominated Eisenhower at the 1952 Republican convention in a speech written by Sobeloff.



The Subject File (1936-73) documents Sobeloff's activities in the American Bar Association, the Federal Bar Association, Maryland Commission on Administrative Organization of the State, National Council on Crime and Delinquency, Institute of Judicial Administration, the Jewish Court of Arbitration and Defamation League, and the Baltimore Urban League. These files reveal Sobeloff's involvement in the Jewish community both locally and nationally. He served as director of the Association of Jewish Charities, director of the Jewish Educational Alliance, and an officer in the American Jewish Congress. Locally he served on the Baltimore Board of Jewish Education and the Baltimore Jewish Council. He was a trustee of Brandeis University and a member of the Visiting Committee in the Social Sciences at Johns Hopkins University.

Some of Sobeloff's early work in municipal and State functions can be found in the Miscellany series (1882-1973), including material from the 1930s concerning the Baltimore Employment Stabilization Commission and his appointment as the U.S. attorney for the District of Maryland in 1931. Included in this series are fragmentary files of Sobeloff's tenure as chief judge of the Maryland Court of Appeals (1952-54), which consist of drafts and printed copies of opinions and a small amount of correspondence and memoranda. Social correspondence, gift lists, travel files, and other personal and financial material are also included here as well as biographical material for both Simon Sobeloff and his wife, Irene. There are very few items in this series concerning Sobeloff's early years, with the exception of a phonetic shorthand manual used while he served as a page in the U.S. House of Representatives in 1909. Additional biographical information can be found in an oral history transcript at the Maryland Historical Society.

Fourteen volumes of scrapbooks relating to Sobeloff and his career were loaned to the Library for microfilming by the donor of the papers. Those scrapbooks are available on three reels, shelf number 18,939.



## DESCRIPTION OF SERIES

<u>Container Nos.</u>	<u>Series</u>
1-8	Appointment Books, 1952-72. The daily record of Sobeloff's professional and social activities, arranged chronologically.
9-20	General Correspondence, 1930-73 and undated. Letters sent and received, memoranda, and miscellaneous attachments and enclosures, arranged alphabetically, with correspondence relating to family matters at the end.
21-33	U.S. Solicitor General Files, 1953-56. Correspondence, memoranda, matters relating to Sobeloff's appointment as Solicitor General, Supreme Court files, office files including research material, printed matter, and clippings, arranged by subject, and chronologically or alphabetically therein.
34-307	U.S. Court of Appeals Files, 1955-73 and undated. Correspondence, memoranda, opinions in manuscript, near-print, and printed form, research materials, and printed matter. Material arranged as follows:
34-109	Opinions, dissents, and special concurrences by Sobeloff, with related material, arranged chronologically by term and alphabetically therein .
110-125	Three-judge courts, arranged alphabetically.
126-253	Opinions by other judges, arranged chronologically by term and alphabetically therein.
254-258	Case file miscellany. District court cases and District of Columbia court cases (1971-73), organized within groups alphabetically. Also included is a miscellany of unidentified material, organized by docket number.

- 259-307 Office files. Material related to Sobeloff's appointment to the Fourth Circuit Court of Appeals, judicial conferences, court dockets and other scheduling matters, personnel records, financial records, and general research material. Organized alphabetically by subject and, where applicable, chronologically therein.
- 308-343 Speeches and Writings File, 1928-72 and undated. Speeches and writings by Sobeloff, correspondence, and other related material, arranged chronologically. Speeches and writings by Sobeloff for others are gathered at the end of the series.
- 344-367 Subject File, 1936-73 and undated. Correspondence, notes, memoranda, reports, material related to organizations in which Sobeloff was active, moot courts, general reference materials, etc., arranged alphabetically by subject.
- 368-395 Miscellany, 1882-1973 and undated. Correspondence, notes, memoranda, biographical material, clippings, matters relating to other members of his family, social invitations, printed matter, personal legal and financial matters, material related to Sobeloff's work on the Maryland Court of Appeals and as U.S. attorney for the District of Maryland.

The Papers of J. Skelly Wright, Library of Congress,  
Manuscripts Division

THE PAPERS OF J. SKELLY WRIGHT

The papers of James Skelly Wright (1911–1988), attorney, judge, and educator, were deposited in the Library of Congress by Wright in 1979 and converted to a gift in 1987. An addition was received in 1988.

Copyright in the unpublished writings of J. Skelly Wright in these papers and in other collections of papers in the custody of the Library of Congress has been dedicated to the public.

Linear feet of shelf space occupied:	116
Approximate number of items:	81,200

Prepared by  
Connie L. Cartledge  
November 1990

SCOPE AND CONTENT NOTE

The papers of James Skelly Wright span the years 1933–87, with the majority of the papers concentrated from 1948 through 1986. The bulk of the papers documents Wright’s career as a judge on the United States District Court for the Eastern District of Louisiana, 1949–62, and the United States Court of Appeals for the District of Columbia, 1962–87. The papers consist of five series: General Correspondence, United States District Court File, United States Court of Appeals File, Speeches and Writings File, and Miscellany.

The General Correspondence series (1947–87) includes incoming and outgoing correspondence relating to Wright’s professional and personal interests. Much of the correspondence from 1962 through 1987 is from members of the legal profession and relates to professional matters.



The United States District Court File (1933–63) is divided into four subseries: General Correspondence, Case File, Opinions, and Office File. The chronological files in the General Correspondence subseries contain incoming and outgoing correspondence pertaining mainly to district court matters. The latter part of this subseries, segregation correspondence, consists of letters to Wright about his civil rights decisions from 1956 through 1962. These letters reflect the deep emotional anguish felt by not only the people of Louisiana, but individuals throughout the United States.

The Case File subseries (1948–62), arranged chronologically by date of last court action, constitutes the bulk of the district court series and consists primarily of papers relating to cases that came before Wright as a judge in the Eastern District of Louisiana. Also included, however, are case files documenting Wright's service as a visiting judge for other circuits, mainly the Southern District Court of New York, and a few cases about which Wright made no decisions but were of interest to him. The Case File and the Opinions subseries (1949–63) reflect the wide range of cases that came before the Eastern District Court during Wright's thirteen-year tenure. Two areas in which Wright was considered particularly adept were maritime law and civil rights. The latter brought him into national prominence with his decision in 1960 on *Bush v. Orleans Parish School Board*. His enforcement of the law mandated by the 1954 Supreme Court case *Brown v. Board of Education* led to the desegregation of the public schools in New Orleans, an arduous process that earned him the wrath and hatred of many in the local white community. The case sheets preceding the case files provide a summary of many of Wright's cases from 1949 through 1954. Papers in the Opinions subseries consist of opinions written by Wright and a few opinions written by others. Most of Wright's opinions are typescripts, although those of later years also include final printed versions. The opinions, arranged chronologically by year, are preceded by an alphabetical index, which for most of the cases identifies when they were decided. Opinions also appear in the Case File and Office File subseries.

Papers in the Office File subseries (1933–62) include correspondence, memoranda, opinions, notes, charges to juries, and reports documenting Wright's administrative activities and his involvement in judicial conferences and local law institutes.

The United States Court of Appeals File (1959–87) constitutes over half of the collection. This series documents Wright’s twenty-five years of service as a judge on the District of Columbia Circuit Court of Appeals and his six years on the Temporary Emergency Court of Appeals. Papers in this series are divided into the following subseries: Case File, Opinions, and Office File.

The Case File subseries (1962–87) includes correspondence and memoranda (chiefly between the judges, the court clerk, and lawyers), briefs, opinions, orders, writs, petitions, vote sheets, notes, background information, clippings, and printed matter. Cases are arranged chronologically by court term beginning in September of each year and therein alphabetically by case. There are, however, exceptions to this order such as opinions and other documents generated after the court term ended in June. This material is usually filed in the previous court term, i.e., an opinion written in August 1979 would be filed in the September term of 1978. Case sheets, organized chronologically by calendar year as Wright’s staff arranged them, precede the cases and provide a detailed summary of Wright’s caseload. The majority of his files pertain to criminal cases and cases involving federal regulatory agencies. Although known for being a champion of civil liberties in criminal justice cases and a proponent of equal justice for the poor, Wright had the most impact in the area of civil rights. His decision in *Hobson v. Hansen* curbed discriminatory policies in the District of Columbia school system. In that case Wright sought to end de facto segregation in the public schools by ordering that education resources be equalized throughout Washington, D.C. Other interesting cases relate to the presidency of the United States, including the Watergate burglary and cover-up during the Nixon administration and John Hinckley’s arrest for the attempted assassination of President Ronald Reagan in 1981.

Papers in the Opinions subseries (1962–86) include published opinions written by Wright and also lists indicating authorship of opinions and case assignments for the District of Columbia Circuit Court. The opinions are arranged chronologically by year, and located in the first folder of each year is an index identifying the names and subjects of cases heard by Wright.

The Office File subseries (1959–87) relates to Wright’s administrative duties and professional activities during his tenure on the District of Columbia Circuit Court of Appeals and the Temporary Emergency Court of Appeals of



the United States. The files reflect Wright's activities in such areas as judicial conferences and councils, investiture ceremonies, and moot court.

The Speeches and Writings File (1956-87) documents Wright's busy schedule as a speaker and writer. Appearing primarily before law classes and legal conferences, Wright's speech files consist chiefly of typescripts and background information, although many of his speeches contain handwritten notations. The majority of the correspondence relates to scheduling matters for speaking engagements. The writings contain book reviews and articles written primarily for legal journals.

The final series in the papers, Miscellany (1935-81), includes correspondence, memoranda, financial papers, teaching materials, photographs, clippings, and printed matter. The majority of the series focuses on Wright's law classes as a professor at Loyola University in New Orleans, 1951-61, and his early career as a notary public, 1936-42.

Among the most significant and frequent of Wright's correspondents are Robert A. Ainsworth, Jr., Jack Bass, Hugo L. Black, Wayne G. Borah, H. Payne Breazeale, John R. Brown, Ben F. Cameron, Robert Coles, Herbert Christenberry, Kenneth Culp Davis, Eberhard P. Deutsch, Susan R. Estrich, Abe Fortas, G. W. Foster, Jr., John P. Frank, Fred W. Friendly, Joseph C. Hutcheson, Jr., J. Edward Lumbard, Sidney C. Mize, Lee Mortimer, Thomas F. Murphy, Frank T. Read, Eugene V. Rostow, Ralph Slovenko, and Simon E. Sobeloff.



## DESCRIPTION OF SERIES

<u>Container Nos.</u>	<u>Series</u>
1-9	General Correspondence, 1947-87, n.d. Correspondence with friends, acquaintances, family, colleagues, and the general public, including attachments and enclosures such as clippings and printed matter. Arrangement is alphabetical by topic or name of person or institution, and chronological therein.
9-71	United States District Court File, 1933-63, n.d.
9-14	General Correspondence, 1949-62, n.d. Correspondence and memoranda, including attachments and enclosures, between Wright and judges, lawyers, and the general public relating to his judicial duties. Arrangement is chronological with correspondence relating to segregation matters filed at the end.
14-60	Case File, 1948-62, n.d. Correspondence, memoranda, briefs, opinions, notes, case sheets, clippings, and printed matter. Arrangement is chronological by calendar year and therein alphabetical, although case sheets for the years 1949-54 are filed as a group at the beginning of the subseries.
60-62	Opinions, 1949-63 Opinions, written primarily by Wright, consisting chiefly of typescripts, although files of later years also include final printed copies. In a separate folder are opinions written by Wright and others on segregation cases. Arrangement is chronological by calendar year. An alphabetical index precedes the opinions.

62-71	Office File, 1933-62, n.d. Correspondence, memoranda, opinions, speeches, charges to juries, background information, notes, reports, clippings, and printed matter. Arrangement is alphabetical by subject.
71-210	United States Court of Appeals File, 1959-87, n.d.
71-167	Case File, 1962-87 Correspondence, memoranda, briefs, opinions, orders, writs, petitions, vote sheets, background information, notes, case sheets, clippings and printed matter pertaining to Wright's duties as a judge on the District of Columbia Circuit Court of Appeals and the Temporary Emergency Court of Appeals. Arrangement is chronological by court term, although alphabetically arranged case sheets precede the cases.
167-186	Opinions, 1962-86 Opinions by Wright, including lists indicating Wright's case assignments, and opinions of the full court. Arrangement is chronological by year, although lists of opinions by both Wright and the appeals court precede Wright's opinions.
186-210	Office File, 1959-87, n.d. Correspondence, memoranda, speeches, meeting agendas, reports, notes, personnel files, background information, clippings, and printed matter. Arrangement is alphabetical by subject.
210-230	Speeches and Writings File, 1956-87, n.d. Correspondence, speeches, articles, book reviews, notes, research material, lists, clippings, and printed matter. Arrangement is alphabetical by type of material and therein chronological.

230-232

Miscellany, 1935-81, n.d.  
Correspondence, memoranda, financial papers, teaching materials, photographs, clippings, and printed matter. Arrangement is alphabetical by topic or type of material.





# Appendix D

## *Letter Regarding Shipment of Papers*

Administrative Office of the United States Courts  
Washington, DC 20544

L. Ralph Mecham  
Director

James E. Macklin, Jr.  
Deputy Director

William R. Burchill, Jr.  
General Counsel

November 19, 1993

Honorable Abner J. Mikva  
Chief Judge, United States Court of Appeals  
United States Courthouse  
Constitution Avenue and Third Street, N.W.  
Washington, DC 20001-2866

Dear Judge Mikva:

I am writing in response to your letter of October 22, 1993, inquiring whether the court may pay to ship a judge's papers to a repository, upon the judge's resignation, death, or retirement from all judicial duties. In my opinion, the court may appropriately bear this expense for all papers except those that are purely personal.

As you are undoubtedly aware, judges accumulate a wide variety of papers in their chambers over the years, mostly but not entirely related to their judicial duties. A judge will often donate or bequeath certain public and private

papers to a repository, if the judge believes they will be of interest to historical researchers. Since the documents have often been created and maintained at public expense, if the judge chooses to treat them as “public” when he or she leaves the bench, I would conclude that the court may pay the cost of shipment to the repository.

To the extent that judges treat their papers as personal rather than official property, it is my opinion that the expense of shipping them to a repository then becomes a personal expense. For example, if the judge takes a charitable tax deduction for the papers, it would appear that he or she considers the papers to be personal property. In addition, such papers would not be eligible for shipment using official postage, because they are not related “exclusively to the business of the Government of the United States.” United States Postal Service Domestic Mail Manual, section 137.251(g).

I hope this brief discussion is helpful. If I should address this issue further, please let me know. With my very best regards,

Sincerely,

William R. Burchill, Jr.  
General Counsel



# Appendix E

## *Register Form for the Location of Judges' Papers*

### MANUSCRIPTS REGISTER

If you are registering more than one collection, please photocopy this form and list each collection on a separate form.

Judge's name: \_\_\_\_\_  
(last name) (first name) (middle initial)

Court(s): \_\_\_\_\_

Inclusive years of collection \_\_\_\_\_

Repository (address & telephone) \_\_\_\_\_

Physical description (linear feet, cubic feet, number of items or other): \_\_\_\_\_

Are finding aids or other guides available? If so, please describe: \_\_\_\_\_

What access restrictions, if any, apply to the collection? \_\_\_\_\_

Has the collection been reported to The National Union Catalog of Manuscripts Collections or the Research Libraries Group? If so, please give citation. \_\_\_\_\_

Name and address of the person reporting this information: \_\_\_\_\_

If you have questions about completing this form, please call (202) 273-4180. Mail to:  
Manuscripts Register, Federal Judicial History Office, Federal Judicial Center,  
One Columbus Circle, N.E., Washington, DC 20002-8003.

## The Federal Judicial Center

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## About the Federal Judicial Center

The Federal Judicial Center is the research, education, and planning agency of the federal judicial system. It was established by Congress in 1967 (28 U.S.C. §§ 620–629), on the recommendation of the Judicial Conference of the United States.

By statute, the Chief Justice of the United States chairs the Center's Board, which also includes the director of the Administrative Office of the U.S. Courts and six judges elected by the Judicial Conference.

The Court Education Division develops and administers education and training programs and services for nonjudicial court personnel, such as those in clerks' offices and probation and pretrial services offices, and management training programs for court teams of judges and managers.

The Judicial Education Division develops and administers education programs and services for judges, career court attorneys, and federal defender office personnel. These include orientation seminars, continuing education programs, and special focus workshops.

The Planning & Technology Division supports the Center's education and research activities by developing, maintaining, and testing technology for information processing, education, and communications. The division also supports long-range planning activity in the Judicial Conference and the courts with research, including analysis of emerging technologies, and other services as requested.

The Publications & Media Division develops and produces educational audio and video programs and edits and coordinates the production of all Center publications, including research reports and studies, educational and training publications, reference manuals, and periodicals. The Center's Information Services Office, which maintains a specialized collection of materials on judicial administration, is located within this division.

The Research Division undertakes empirical and exploratory research on federal judicial processes, court management, and sentencing and its consequences, often at the request of the Judicial Conference and its committees, the courts themselves, or other groups in the federal system.

The Center's Federal Judicial History Office develops programs relating to the history of the judicial branch and assists courts with their own judicial history programs.

The Interjudicial Affairs Office serves as clearinghouse for the Center's work with state–federal judicial councils and coordinates programs for foreign judiciaries, including the Foreign Judicial Fellows Program.





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**Federal Judicial History Office  
Federal Judicial Center  
Thurgood Marshall Federal Judiciary Building  
One Columbus Circle, N.E.  
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(202) 273-4180**